App. F. IX-4

1934 (Law)

File No. 24.34

Serial Nos. 16 & 16

Previous References
Law 54-30-1-3
64-31-1—6

(15)

Later References.
Law 43-35-1-2
Mus. 202-44-(1-2).B. May 45

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two.

Part B for May 35

SUBJECT.

R. A. 16/30-31 on the file of the Hgh. Court (Bhimana Katte Mutt case)

WD 01965—GPB—15,000—7-7-34

Abdul Aziz
28-6-35

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

D·121

Comn. from the M.C.
re Bhimanakatte mall.

1) Bhimanakatte in the Tirthahalli Taluk is a malna place. According to medl opinion, the young man is suffering "a very slight" from enlargement of spleen and digestive trouble".

2) He wanted to go to Nagpi for a change. The M.C. has sent for personal a copy of the D.C's letter declining permission for reasons stated therein

3) Both the D.C. & D.M.O. have seen him & the medical advice has been given to h

ld routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

12

G.R.S. III—31

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

The Swamy is in possession of the "Mon" and cannot leave the place for some months to come.

4 the question may perhaps be considered, if the Swamy's guardian or his guardian again moves in the matter.

5) The civil suit Re succession is going on in the Dist. Judge's Court (vide Limitation). No further repeat promises may be awaited.

Submitted.

Asst Secretary

21.7.28.

Dist Member

28/7

Mud 28/7/28

Secy

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

GOVT 1928 No. 523

1337

(3

App. F. III—2]

General and Revenue Secretariat. | File No. | of 192

Serial No.

Letter No 1606/27-28 dated the 18th/20th February 1930 from the Inspector Cooperative Societies reporting that O.S. No 6/25-26 on the file of the District Judge, Chingleput re Succession to the late Bhimanna Kattu Mutha was dismissed with Costs on the ground that the Cognizance of such a suit by the civil Court was barred, that the Deputy Comm would be requested to obtain a copy of the order and to take action to recover the costs from the Plaintiff, and that a copy of the order would be posted for Information when received & if allowed further report will be submitted. Submitted for orders

C.S.
1/3/30

1/3

1/3

Note—Contn. Sheet.

WD 01714—GPB—30,000—18-4-26

Serial No.

Letter No: C.1406/27-28 & 18/6/3

From the Mwz. Commr.

Forwards a copy of the proposals regarding the succession to the Peetha of Sri Bhimanakatte Mutt and proposes that the management of the properties may be restored to the Swami on certain Conditions - etc.

1) The Mwz. Commr. may perhaps be told that his proposals are accepted and that Govt: shall await his further report on the result of his discussion with the Swamigalu.

(Vide last para in his letter & 18/6: Subd 8) It would perhaps be more appropriate to get the Swami to agree to the conditions suggested by the Mwz. C., as well as such other terms as Govt would like to have by way of safeguard in a Suit such in the first instance, before final orders are passed (The question of costs from the plaintiff referred to in the M.C.'s previous letter has not been adverted to in this)

28/6

28/6

23/6/30

23/6

9 The

Serial No.

M. C's proposals and conditions may be generally approved. He may consult the Swami and send up the final proposals for the consideration and orders of Govt.

V.N. Menon

4/7/30

VS 8.7.30

OFFICE OF THE ... JUL 1930 No. 206

10. It is necessary to obtain information on some points. What is the age of the Swami? Has he completed his education? Does he appear to be capable, in the opinion of the Muzrai Commissioner of managing the temporal affairs of the Mutt?

11. Restoration of the properties of the Mutt can be allowed only subject to conditions which would make for their proper administration. As regards the conditions proposed, some points have to be cleared up.

12. Condition (a).- I am not sure if it is necessary to provide for this in the agreement. The assumption of management by Government was, I believe, under Section 25 of the Regulation, and the Head of the Mutt can have no claims against Government on grounds of alleged improper management of the properties, nor can he refuse to take over liabilities contracted by Government in the interests of the Mutt during the time that the management was in their hands. The Commissioner may be requested to state why this condition is proposed

12. Condition (b).- I think this is all right.

WD 01634—GPB—39,000—29-4-29

2610

66

Serial No.

13. Condition (c).- There can be no alienation of inam lands of the Mutt. The Head of the Mutt cannot also permanently alienate other properties of the Mutt. Why it is proposed to refer to alienations of a permanent character in this condition is not clear. Same remarks apply to properties of the temple referred to in this condition. The provision in regard to the utilisation of invested funds is, I think, all right.

14. Conditions (d), (e) and (f).- are, I think all right.

Muz 8-7-30

VS 10-7-30

15. Subd with a draft for land Consideration

GS Muz 10/7

H. Secy)

VS 11.7.31

16. Issue

VS 12.7.30

to.

2 The Muz Comr

No 94 d. 14-7-30.

Calls for some information re restoration in Nl.

6/7/30

Note—Contn. Sheet

WD 01684—GPB—30,000—20-4-29

General and Revenue Secretariat. Mng File No. 399 of 1929-30.

Serial No.	
3.	Letter no: 1406/27-8 dated 24-7-30 From the Mng. Comm^r. Furnishes the information called for in serial 2 and explains the necessity for the insertion of conditions (a) to (e).
17)	Subd for kind orders with reference to Member's minute dated 29-7-30 - paras 10-14 of the notes. (Gs 29/7) (H. Secy) 31.7.30 (1st Member) 1/8/30
18)	The recommendations made in M^r's letter 8-14/18.6.1930 may be accepted. He may be asked to take further action as suggested in the last para of that letter. 4/8/30 5.8.30
19)	Subd with a draft letter to the Mng. Comm^r. for kind consideration. (Gs 5/8)
20)	Please put up a typed draft. 7.8.30

FF. I MEn. 2 AUG. 1930 No. 834.

18/55/18

Mng. 86-29 is linked to this file as per kind orders of the 1st Member. Gs 1/8

Kohli

Subd B. for disposal of this file. (Gs) 13/8/30

8(8

143-31

App. F. III—2]

General and Revenue Secretariat. Jm3 File No. 399 of 1929-30.

Serial No.

21) Typed draft is subd as per Fwd orders of the Asst: Secy:

Gs & 8/8 — Jt. Secy) 22 VS 11.8.30

23 W/D

to Issue

VS 12.8.30

4. to The Mkg Comr
no 322 of 12-8-30
Requests him to take action and submit a report of the result for the information of Govt

Letter no 1406/27-28 of 1.8.1931 from the Marketing Commissioner stating that if the draft agreement is approved further action would be taken to have it duly executed and adding that it is a point for consideration whether the management should be handed over to the Secretariat without waiting for the decision of the appeal matter referred to in 25 ante, the decision of the High Court in the appeal case before them will have to be awaited. The Law Secy may be consulted as regards the handing over management and form of deed submitted

GS MSK 13.8.30

GS MSK 4/8

Jt. Secy) 26) VS 5.8.31

WD 1606—GPB—30,000—26-7-29

Mis 393-29

6 80 of 31

27) I Law right- in favour of Opinion.

VS!

31

Law

28.1) Possession and management of the property of the Bhimanakatte Mutt was taken over by Govt after the death of the Old Swami and on account of the minority of the present Swami nominated by Govt. The Mysore Regn of 1913 under which the management was taken over did not provide ~~for~~ when such management ought to cease. Sec. 25 of Reg VII of 1927 however is imperative on the point and says that such management shall cease "when the minority or other disqualification mentioned above terminates" The disqualifications mentioned are 'physical or mental infirmity', by reason of which the person is unable to manage the affairs of the institution. None of such physical or mental infirmity appears to be present in this case, and prima facie therefore the Swami's claim to the management being restored to him by Govt cannot be resisted.

29) But there is one difficulty in this case. The question of the right of the Swami to succeed to the Peeta is itself in dispute though he has a decree in his favour in O.S. 6 of 25-26 in the District Ct, Shimoga, that decree

Serial No.

is now under appeal in A.A. 16 of 30-31 in the High Court. Again during the pendency of the original suit, the plaintiff who claims the Peeta as against the Swami nominated by Govt, obtained from the Dt Ct an order of injn restraining the Govt from handing over certain of the properties to the Swami. The injn order was cancelled on motion being made by Govt but was again issued by the High Court on a miscellaneous appeal filed by the plaintiff. On the hearing of this appeal, the Advocate ~~for~~ appearing for Govt (Mr D. M. Ramachandra Rao), gave an undertaking, under instructions from the Mur Govt, imposing certain conditions on the use of moveables to be handed over to the Swami and stating that the immoveable properties would continue to be managed by Govt until the disposal of the case.

Hof K in Mur File 349-25 (Sls 1-13)

30 In view of these circumstances, it does not appear to be advisable to hand over management & possession of all the properties of the Mutt to the Swami until the appeal is disposed of. Unnecessary complications may arise if such a course is adopted. For one thing the plaintiff appellant in the Court will have a fresh cause of grievance and may even obtain

:—Contn. sheet.

WD 066—GPB—30,000—26-7-29

11 11)

Mur 398-39 68)

Suitable orders of ~~the Govt~~ the Court preventing the Govt from divesting itself of the management.

31 If however it is considered necessary to vest the Swami with the management of the Mutt-properties, it appears to be desirable & expedient to place the matter before the High Court before any action is taken, especially in view of the undertaking given in the Mis Appeal.

31/Law

GENERAL SECRETARY.
19 AUG. 1931
No 1385

Gen Secy)

ROP
19.8.31

Find Secy with comps)

32) Secy 21/8

25/91
21/8

33) 2nd. member)

ROP 21/8

21/8/31

34 I had suggested a Rule in a note that the question of amending the Mur Regn may be taken up. There happens may be put up separately.

35 As regards the present case, it appears to be best unless difficulties & questions of 'undertakings' in the High Court are involved, it would be better to refer it to the Govt Advocate. I sd particularly like to know how far undertakings given in an Original Suit - Continue after that Suit is disposed of & so on.

OFFICE OF THE
SECOND MEMBER OF COUNCIL
25 AUG. 1931
No 371

Serial No.

36 As the present Govt advocate has already stated that he is appearing for the other side, he may not be in a position to give us advice. I would however like the legal questions raised in the case to be further examined by the Legal Dept, Protn branch. The file may be sent to him for a note

25/8

Under Secy
Protn. Branch 37)
(with Complts)

26.8.31

38) The present Swami was nominated to the Bhimanakatte Mutt by the Government and they took over the possession and management of the property of the Mutt on account of the minority of the present Swami. One of the rival claimants filed a suit in O.S. No. 6 of 25-26 on the file of the District Court, Shimoga, for a declaration that he was entitled to succeed to the Peeta, that the nomination of the present Swami by the Government was void and for restraining the defendents from doing any acts inconsistent with the right of the plaintiff to succeed to the Peeta, and impleaded

the

Serial No.

the Government and the present Swami as defendents. During the pendency of the suit, the plaintiff obtained an order of injunction restraining Government from handing over the possession of certain moveables ~~of~~ the present Swami till the disposal of the application for the injunction or until further orders of the Court. The Government and the present Swami filed objections and after hearing ~~the~~ arguments, the temporary injunction was ~~suspended~~ dissolved. Against that order, the plaintiff appealed to the High Court in Miscellaneous Appeal No. 13 of 26-27. The High Court directed the counsel for the Government to inquire and state what measures Government proposed to adopt for securing the proper custody of certain images. He consulted the Muzrai Commissioner and filed in the Court a letter ~~written~~ from the latter to him. The High Court was satisfied that the precautions were sufficient and dismissed the appeal.

39 The suit itself was ultimately dismissed and it is under appeal in the High Court now, ~~The High Court vide~~ in R.A. 16 of 30-31.

40 Now, there is no injunction order as it has been vacated by the original Court itself, and the order has been confirmed on appeal. The question is whether Government have given an undertaking to the High Court not to deliver possession to the Swami and if so, what its

Serial No.

effect is. So far as the immoveable properties are concerned, no such question can arise since the injunction order was in respect of only the moveables and not the immoveables.

41 The proceedings do not show that there is any undertaking on the part of the Government in the sense that it can be enforced or a contempt of proceedings can be initiated for a breach thereof. The High Court directed the counsel to inquire and state what measures the Government proposed to adopt for securing the proper custody of images. In reply the counsel produced a communication from the Muzrai Commissioner assuring that necessary security would be taken. Copy of the letter is on the file. The High Court observed that they were satisfied that the precautions sufficiently answered the purpose and dismissed the appeal. The letter does not constitute an undertaking. The Government themselves had proposed to take certain precautionary measures for handing over the possession of the moveables. The plaintiff wanted to know what arrangements Government had made to safeguard the moveables belonging to the Mutt and to prevent their being alienated or removed or concealed. The High Court wanted information on this point. The information was furnished by the counsel by producing the letter of the Muzrai Commissioner The High Court order is not conditioned on any undertaking of the Government and the Government is not subjected to any obligation by the order.

Flag "K"

NOTE—Contn. Sheet.

WD 02553—G PB—50,000—8 7 39

(42) Even if the letter be construed as an undertaking, it is enforceable only during the pendency of the suit, because the condition is expressly limited by the terms of the letter itself till the termination of the case pending before the District Judge of Shimoga.

(43) The law in regard to duration of temporary injunctions is that discharged on the dismissal of a suit, and does not revive on the filing of appeal. (28 Calcutta 597 at 607 and 1924 A.I.R. Mad 178). If a temporary injunction is required, a fresh order has to be obtained from the appellate court. Even if the suit should happen to get remanded, since the decision of the original court at present is on a preliminary point, the order of temporary injunction will not revive. There is no definite authority on this point in regard to temporary injunctions, but there is a decision of the Full Bench of the High Court in 34 Mysore Chief Court Reports, 450, in respect of attachments before judgments, which is analogous to an interlocutory order, and the same principle will apply to temporary injunctions also. It is observed therein that if an attachment before judgment automatically terminates on the dismissal of a suit and even if the suit is restored, the attachment does not revive except by a fresh order of the court. If after dismissal of a suit certain alterations take place in regard to the position of the properties, a fresh order of the court can be only on the basis of the altered position and it cannot restore the status quonte.

(44) Consequently, even if it be held that the dissolution of the injunction is subject to an

Serial No.

undertaking, it cannot be enforced beyond the period during which the injunction itself would have force. Besides, the term of the undertaking itself is only for the period of the suit.

(3) Since the Government itself is imposing certain conditions on the Swami while restoring the properties to his custody, this would be fulfilling ~~in conformity with~~ the terms of the letter filed in the Court and would not be a breach thereof. Consequently, there does not seem to be any legal difficulty for delivering possession of the property to the Swami.

(4) But still, since all the persons interested are before the appellate court including the present Swami and since any order in regard to the temporary injunction that has been passed binds all the parties, it seems to be advisable to apply to the High Court for a direction in regard to the proposal of the Government to deliver over the properties to the present Swami in as much as he has attained the majority. The counsel for Government may be directed to file an application setting forth the facts and solicit orders of the Court. If this is done, any order that is passed will be binding upon the present Swami also and he cannot have any legal rights against Government inconsistent with such an order.

(Second Member) 47
(Temple Financial Secretary)

3/10/29

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

47) 143.

File No. 399 of 1929 | General and Revenue Secretariat

48) As both the officers are in favour of placing the matter before the High Court & as I agree with them that it is the safest course to follow. The M.C may be asked to take necessary action in accordance

OFFICE OF THE SECOND MEMBER OF COUNCIL
OCT 1931
No. 1554

J 10/10

49) XX h

50) A draft is submitted as per orders supra. As however the counsel for Govt has been advised by the Law Secy to make necessary appn before the High Court, the file may be transferred along with the draft to the Prot Br for action.

Secy 7/10 H. Secy) 51) 7.10.31

52 h 8/10/31

53) To Issue from Prot Br. 8.10.31

54 Mr. Ghose.

Please put the file relating to R.A 16 of 30.31 in the High Ct & also the file appointing Mr. C.L Gowda to appear for this & certain other cases in the High Ct.

9.10.31

55 Proper returns in the file are herewith put up

9/10.

General and Revenue Secretariat | File No. | of 193

Serial No.

I do not think the draft suggested in the Mem. for work do. I have put up a separate draft to the M.C., copy of which is proposed to be sent to Mr C.L. Gowda for necessary action.

Submitted for approval

Gen Secy) 58) 9/10

Fin Secy) ✓ 9/10

59) Secn. Mark 10/10/31

60) Issue today 10/10

To,

The Mys. Commr

No. P. 2107 dated 10.10.31 suggesting to file an application in the H.Ct. for a direction in regard to the proposal of the Govt to deliver the properties to the present Swamiji in as much as he has attained majority and want management of the Math properties to be vested to him, and requesting to instruct Mr. C.L. Gowda to move the H.Ct. in the matter and obtain orders of the Court thereon.

Copy to Mr. C.L. Gowda.

61) Mys Br. for perusal & return

15D 16/10.

GENERAL SECRETARY'S 9 OCT 1931 No 2107

DRAFTING SECTION 10 OCT 1931 4-50 PM I & REVISING SECTION

NOTE—Contn. Sheet.

Submd for perusal 14.10.31.

WD 02553—G P B—50,000—8-7-30

680/p/31

389

File No. 388 of 1931

General and Revenue Secretariat

Letter no 406 of 13/10/31 - from The Mayavaram Commissioner submitting for orders Srimukha of 2-10-31 from the Swamigalu of the Sri Bhimanna Kalle Mutt requesting the restoration to him of the management of the Mutt properties

(Process of the Secretary under P.L.-A. & Rules 11.

A definite reply on the subject has issued from the Law Secy vide letter no 2107 of 10.10.31.

It added, The attention of the M.C. will be drawn to that letter. In order —

363
14/10

H. Secy) 14.10.31

14/10

Issue
16.10.31

Issued No. 55 of 16.10.31.

Law Secy)

Sus B.

Sus is to await report from M.C. by 8th Nov

Report not yet received 24/10

Draft subd

TYPING SECTION
16 OCT. 1931
P.L. & REV SEC

1,807

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.

M A draft may be put up to Mr. C. Gowda in continuation of P 2108/Land dated 10.10.31, enquiring what action has been taken in the matter so far and requesting him to send a copy of the application to be filed in the High Court for information of Govt. Copy to Tl Com^r

BDR 16/11

M Dft put up accordingly

TSD 16/11

B Issued

BDR 16/11

Issued vide P. 2856 dt 18.11.31.

LEG SECTION
16. NOV. 1931
4-55PM
LEGL. & REV. SECTT.

Sec A

TSD 19/11

From The Nuzvid Com^r

1406/27-8 dt 19/20/11/31

1) Forwarding copy of letter received from Mr C. Gowda with reasons in support of the application for restoration of the management of the Sri Bhimavaram Kattemadha properties to the Swamijee opining for reasons stated, that it will not be safe for Govt to hand over possession to the present swamiji until the appeal pending before High Court is disposed of—

2) From Mr C. Gowda dt 20.11.31 forwarding copy of letter sent to the Nuzvid Com^r giving his opinion in the matter of ~~as to instructions to file the petition were to be given by the Nuzvid Com^r~~ stating that

M Kind ref^e is invited to para 66 & 68 supra. Mr. C. G.

BDR 21/11

NOTE—Contn. Sheet.

WD 02563—G P B—50,000—8 7 30.

217/1

1/2664

File No. of 193 General and Revenue Secretariat

Gowda off[n] opinion that any decision in the matter of restoration of property to the Swami will be affected by the doctrine of lis pendens and it will not be safe for Govt to hand over the management of the property under they are prepared to take up the risk of paying the mesne profits in the event of the plff's success in the case. Mys. Comm[r] also agrees with the opinion of Mr. C.L. Gowda. Govt. AD. may perhaps be consulted w. officially.

TOD 4/11

I fear Mr. C.L. Gowda has not correctly understood the scope of the instructions conveyed in this office letter of 10th Oct 1931 to the Mysore Comm[r]. It is to get over all the difficulty about lis pendens etc that an appln to the Court was suggested. Sec 52 of the Transfer of Property Act which deals with lis pendens, explicitly contemplates orders of Court being obtained in such matters.

If approved, I shall request Mr C.L. Gowda to call over here so that the matter may be fully discussed in person —

Gen Secy 24/11 DOY 24/11

Issue the DO letter today

DOY 24/11

GENERAL SECRETARY'S 24 NOV. 1931 No 3705

This cannot be done since Mr Nagaswamy is appearing for the appellants in the case —

DOY 24/11

TYPING SECTION 24. NOV. 1931 4-15 P.M. GENL. & REV. SECT.

2685

(22)

[App. F. III—2

General and Revenue Secretariat | File No. | of 193

Serial No.

To:-

1 Mr C. L. Gouda

D. No. 2015/1929 Dt 24.11.31

Call over like at any time convenient to him during office hours.

V Since C. L. Gouda has not come hither now. Please put up a draft enquiring when he will be able to go over here.

BNP 30/11

80 Dft. Put up.

ISD 30/11

81 Issue

BNP 30/11

TYPING SECTION
30 NOV. 1931
4-30 P.M.
GEN. & REV. SECT.

Issued No. P. 3075 dt 1.12.31.

ISD 2/12

82 I have had a talk with Mr. C. L. Gouda - He has promised to send a draft addr.

BNP 2/12/31.

From

Mr. C. L. Gouda

No - dated 7.12.31 forwarding for appl Signature a copy of the appl under Sec 151 C.P.C. in T. P. Reg 2

Subj for appl and signature upon Cl. Sec

ISD 7/12

83 Refce para 48 supra. The application sent by Mr. C. L. Gouda is in order & may be approved.

NOTE—Contn. Sheet.

23

File No. of 1931-2 General and Revenue Secretariat

After approval, it will be put signed by the Chief Secy & duly returned to Mr. C.K. Gowda.

MP 7-12-31

Gen Secy
Second Member
Third Secy
(Mus)

7/12

8/12

8/12

MP 8/12

GENERAL SECRETARIAT
7 DEC. 1931
No. 4081

H 4558/8-12-31

OFFICE OF THE SECOND MEMBER
8 DEC. 1931
No. 3678

85) 9/12

9/12

0) For favour of signature
Chief Secy)

MP
9/12
Sdy
PR
9/12/31

CHIEF SECRETARY
9 DEC. 1931

87) Dft returning the signed copy to Mr. C.K. Gowda
Copy to H. Con²

MP
9/12

88) Dft Put up.
ISD

89) Issue today
MP
10/12

TYPING SECTION
10 DEC. 1931
3-PM
REV

To Mr. C.K. Gowda Adv.
3242 of 10/12

Returning the appln duly signed to be filed requesting to report the progress on each date

for A.
9/12

389 487 (2nd)

General and Revenue Secretariat. Law File No. of 193 1-2 [App. F. III—2

Serial No.

14/12

4749 14/12

for B

9D) Mur Br for formal and return

Dnp 13/12/31

To Secy)

VS 14.12.31

14/12 VS

Law Secy)

9E 15/12

DNP 15/12

This file which was rec'd herewith 2715/P of 31 is returned to the Law Secy for further action with compliments

Asst Secy 31/12/31.

Sec B 2/1

92) a report may be called for from mr chgnsw

DNP 2/1/32

Dft put up.

TSD 2/1

Issued vide P. 3691 dt. 5.1.32

Sec A TSD 8/1

97) Dft returning the Kenaeuka records sent with Mun. Comr's letter dated 28th ult 31 for put up for appl.

DNP 6/1

TSD 8/1

Issued DNP 8/1

vide P. 3805 dated 9.1.32

Sec A

To await report from Mr. C.I.G. Issue R'der 15th DNP 11.1

TYPING SECTION 2 JAN 1932 GENL. & REV SECT.

TYPING SECTION 8 JAN 19[illegible] GENL.

Note:—Contra Sheet.

WD 70—GBPM—60,000—13-8-31.

21.

File No. of 193

General and Secret

From.

The Mys. Commr

No. 14906/17-28 dated 5th Jan 1931 forwarding Srimukha of the Swamigalu bringing to the notice that Lakshminarayanacha, minor guardian of Vedamurthy Balakrishna has disposed of all his properties and that there is no possibility of recovering costs awarded by the Lower Court and those to incurred in the appellate Court, and requesting the necessary instructions to Mr. C. L. Gowda to move the Court to demand adequate security for the said costs.

Said reference is invited to para 83 Supra. An application for the restoration of the properties to the Swami has already been filed by Mr. C. L. Gowda. Copy of the Mys. Commr's letter together with the Srimukha may perhaps be sent to Mr C. L. Gowda for necessary action. Dft submd for Consideration

TSD
8/1

Please bring up
MR
8/1

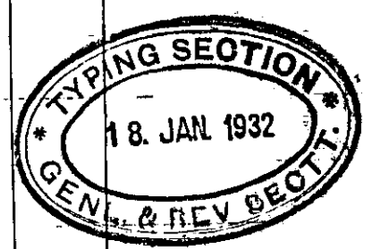
27

248/P

File No.

of 193 .

General and Revenue Secretariat



subs with draft, as the report called for from Mr. C. Gouda has not yet been received. ..

16/1 ISD 16/1

Issue
MM
16.1.
4042 by 20/1/32

From.

Mr. C. L. Gouda ... Advocate, ... (N.)

no. nil dated 29.1.32. enclosing a copy of the objection Statement filed by the appellant's Counsel, and stating that the date of hearing the appeal is finally fixed to 22.2.32 Since it was agreed that the trouble of deciding the interim matter could be avoided by adjourning the hearing of the appeal finally to a near date, and pointing out that Govt may safely hand over the movable properties to the 4th Defts. if they are so inclined without any hesitation Certain Chetties as they are holding the properties not as a mere Custodian but as manager on behalf of the 4th Defts.

(2) printed records of the appeal may perhaps be called for, for perusal and return, especially to consider the views suggested in para 2 of the P.W.D. ..

Subs for perusal and orders.

KD 4/2

(3) There is now no necessity to consider the question of leaving over management of the properties to the 4th defendant, since it is

Serial No.

reported that the appeal itself is posted for hearing to the 22nd inst., when the entire matter will be settled.

Submitted for perusal. Refer *para 48 supra.

(Chiefsecy)

4 FEB.

DSP 4/2

Secy 4/2/32

9b) Secy Br with compts for perusal & return

DSP 5/2

GENL. & REV. SECRETARIAT 5 - FEB. 1932 MURREE

Submitted for perusal

(Jt'secy)

Asst Br 8/2

5962/8/2

h 13/2

Secy 13/2

Lawsection with Compts

Secy B DSP 18/2

Dft R. for sup

ISD 16/7

Secy DSP 16/7

TYPING SECTION 18. JUL. 1932 GENL. & REV. SECT.

No: P 365 | dated 19th July 1932

NOTE—Contn. Sheet.

594

29

File No. of 193 . | General and Revenue Secretariat

GENERAL SECRETARY. 4 AUG. 193. No.

Letter dated 26th July 1932 from Mr. C. K. Gowda, stating that the further hearing of the appeal was delayed on account of the appl^n for security for costs made by him under instructions from the Mun Com^r & that it now stands posted to 8-8-32 for hearing -

2) It was at the instance of the Swami (4th respondent) that the Mun Com^r moved the Govt for instructions being issued to Mr C. K. Gowda to apply for an order for security for costs, on the ground that the appellant being a foreigner & has no property within the State to meet the costs.

3) Mr. C. K. Gowda now reports that the appl^n had to be abandoned, since the Swami himself admitted that the appellant had ample property for the realisation of costs.

4) The hearing of the appeal has been delayed on this account for nearly six months & it stands posted now to 8th August.

Submitted for perusal.

(Gen Secy) MP 4/8

RR 5/8/32

5) Mun Dr for perusal & return

MP 5/8

Submitted for perusal

Read 6/8/32 (Gen Secy)

6/8/32

9/8

Law section with compliments

10/8/32

GENL. & REV. SECRETARIAT 174 6 - AUG. 1932 MUZRAI.

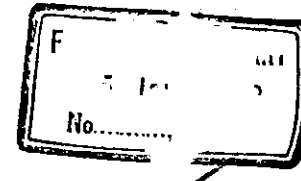
TYPING SEC- 29. NOV. 193. GEN & REV SE

406/27-28

Encl One

OFFICE OF THE MUZRAI COMMISSIONER IN MYS

Bangalore, 24th January 193 3



FROM

S. HIRIANNAIYA, B.A., B.L.,
Muzrai Commissioner in Mysore,
Bangalore.

26/1/33

To

S.Shamanna, Esqr., B.A.,
Secretary to the Government of His Highness
the Maharaja of Mysore,
.....Financial.....*Department.*

SIR,

Referring to correspondence ending with your letter No. 558/Muz.399-29 dated 16/17th October 193 re. the restoration of the management of the properties of the Sri Bheemanakatte Matha to the Swamigalu, I have the honor to state that it is intimated by Mr.C.L.Gouda that the petition filed in the High Court of Mysore for handing over properties to the Swamigalu was withdrawn in the circumstances set out in his letter dated 29th January 1932 addressed to the Chief Secretary to Government (copy enclosed for ready reference) and to request to be informed as to what further orders, if any, have been passed in the matter, as the Swamigalu has been repeatedly writing for

for being put in possession of the Matha properties. The draft of the agreement to be executed by the Swami before he is put in actual possession of the properti has already been sent with this office letter No.C.140 1927-28 dated 1st August 1931.

I have the honor to be,

Sir,

Your most obedient servant

Muzrai Commissioner.

V.S.M.

ter dated 29-1-1932 from the Mr.C.L.Gouda addressed to the Chief Secretary to Government of Mysore.

Ref: Yours No. P.4042/Law d. 20-1-32 re R.A.16 of and Bheemanakatte Matha.

Re petition for permission to hand over the Mutt properties to 4th dft. which was duly filed on 12-12-31 applt.-ptf's advocate (Mr.A.R.Nageswara Iyer) obtained several adjournments to file his objection statement and ultimately filed one as per annexed copy on 22-1-32. As the trouble of deciding this interim matter could be avoided by advancing the hearing of the appeal to a near date, it was agreed on all hands that this should be done and the Court passed orders accordingly. When I went accordingly to have the date fixed up, I found that notice of the appeal which had been ordered to be published in the Gazette and certain Newspapers by 18-1-32, had not yet been purlished by applt's advocate, of which fact I was not previously aware. I have now got the date of hearing finally fixed for 22-2-32 and obtained a promise from applt's advocate that he would send the necessary matter for publication forthwith.

At the same time, it is my considered opinion after

after perusing the print record of the appeal, which had not been delivered to me when I first wrote in the matter to the Muzrai Commissioner (on 23-10-31) that Government may safely hand over the mutt properties to the 4th dft. if they are so inclined, without any fur or other liability than for ptf's costs in the unlike event of his success in appeal, as the suit is merely declaration as the Government hold the propertie is a mere todian but as manager on behalf of the dft. whose right they have recognised.

I may add that the 4th dft's representatives hav been coming to my office and informing themselves of progress of the petition from time to time.

" C o p y "

For Muzrai Commissioner.

V.S.M.

Serial No.

10(V) This may kindly be sent to Law Secy. & kindly state the stage in which the question stands at present whether the suit pending in High Court has been disposed of. [The connected file is in the Law Secy.]

G.S. Kelu
30/1/33
Law Secy.)

2) 30/1/33

10(3) The appeal was posted to 5.1.33.

Progress report may be called for from Mr. Ch. Gurda

WD 70—GBHM—60,000—13-8-31.

100 Dfs Prep

150 2p

Sus A

Issued vide 4556 dt 8.1.33.

R.A. 16/10.31
Note-Cover Sheet.

TYPING SECTION

TB.

31

R. A. 46/30-31 on the file of the H. C. Bhimanakatte Matt Case.

File No. 816 of 193 .

General and Revenue Secretariat

From.

Mr. C. K. Gowda

No. dated 28.2.33 stating that the above appeal has been held up for the reasons pointed out, and suggesting that he would make a prayer that the matter might be disposed of by a Single Judge other than the 2 Judges already

10/3 This may be sent to the Muz. Br. for forwarding a copy of the letter to the Muz. Commr. in reply to his letter dated 28.1.33.

2/3 (Mur Br) 10/3 C 6/3/33

6 Asked for orders & in reply to P. U. & a copy of letter of 28/2/33 from Mr. C. K. Gowda may be sent to the C. as requested in Para 6 of Secta.

6/3 2/3

10/3 This may be done.

10/3/33

Jr: Secy)

10/3 20/3

6/3 2/3

3/4

5/4

GENL. & REV. SECRETT.
6 - MAR. 1933
MUZRAI.

P. No.

REV.

General and Revenue Secretariat — Mug File No. 46 — of 1932-33 — 469/P/33 — 32 — [App. F. III—2

Serial No.

No 1414 dt 7-4-1932 from the Mysore Commission forwarding copy of letter dt 28/2/33 from Mrs C. Lakshmanna and Advocate on the Subject referred to therein.

Returned to Law Secy for Legislative Dept
8/4 Mug
10/4

110) Mr. C. L. Gowda's letter dated 28.2.33 is returned here for reference, with the main file. This may be returned to the Hyg. Br.
15D 10/4 MBR

111) Let me see this. MP 10/4

Whether under the file — No necessity of having a file on the same subject — MP

113) The main file is herewith linked for perusal.
15D 12/4 MBR

114) Please ask Mr. C. L. Gowda whether there is any likelihood of the appeal being taken up without the Constitution of a special Bench & whether any date for its hearing has been given.
MP
12/4.

115) Dft put up accordingly
15D 12/4

116) Issue
MP 12/4

Issued vide P. 5399 dt 18.4.33

TYPING SECTION 13 APR 1933 NL & RLY Sec

NOTE—Contn. Sheet.

Sec A 13/4

15D 70—GBPM—50,000—13-8-31.

33

1768/33

File No. of 193 . General and Revenue Secretariat

From,

The Mg. Comr.

No. Rev. 6. dt. 10.7.33 forwarding a copy of the Shimoga D.C.'s letter dated 5.6.33 and soliciting instructions in the matter.

(117) The D.C. wants to know when the management of the Bhimana Katte Mutt will be handed over to the Mutt. A pr. report in R.A. 6/20.31. will be called for from Mr. C. L. Gunda.

Dft put up for appd.

SD 13/7

Issue

DSP 13/7

Issued no. P. 972 dt 15.7.33.

Sec A 17/7/33

From

Mr. C. L. Gunda

dated 21.7.33 stating that the Case stands adjourned to 29.7.33 on the definite understanding that it will be heard on that day.

(118) Submit for dft forwarding a copy of the C. L. Gunda's letter to the Mg. Comr.

SD 26/7

(119) Issue

DSP 26/7

Issued no. P. 975 dt 29.7.33

TYPING SECT * 13. JUL. 1933 * GENL. & REV SECTT

TYPING SECTION * 27. JUL. 1933 * GENL. & REV SECTT

816 352 1813 284

General and Revenue Secretariat | File No. of 193 . | [App. F. III—2

Serial No.

From,

The Sramigalu of Bhimanakatte
no. 4/33-34 dated 2.10.33 stating that
it is learnt that the application filed
in the H.Ct. in the matter of restoration
of the properties has been withdrawn
at the instance of Govt and that
there is no legal disability to take action
in the matter, and requesting to
pass immediate orders restoring the
properties

Ref: paras 95-99 supra.

iii) The question of handing over management
of the properties was deferred since the appeal
itself was reported to be heard and disposed of
soon. Mr. Lakshmana Gowda reports in his letter
dated 24.7.33 that the appeal was adjourned to
27.7.33 on the definite understanding that it would
be heard on that day. Further progress report has
not been received till now. Pl calling for the
same & put up.

ISD
9/10.

iv) Issue + reminder

BRP
9/10/33

Mr. C. L. Gowda

v. P. 1609 d 10.10.33 enquiring whether the
Case was heard and if so with what results

iv) Reminder
ISD
12/10

iv) Mr BV for perusal + return.

BRP
12/10/33

TYPING SECTION
9 OCT 1933
GENL & REV SECTT

NOTE—Contn. Sheet.

WD 70—GBPM—50,000—13-3-31.

85 1813/P/33

File No. of 193 General and Revenue Secretariat

(24) Rubbl. for perusal.

H. Lees) Lcdo 13/10/33

Asd 14.10.33 14/10

(25) Law Lecture, with Counter S.

Lcdo 16/10/33

Sec A 16/10/33

From.

Mr. C. L. Gowda

Letter dated 25.10.33 intimating that the Case is posted to 27.10.33 for actual Hg, and enclosing a Copy of objections to be filed.

Submitted for perusal.

(26) Dfr. enquiring whether the appeal was heard yesterday, & fate of the appln

JSD 28/10/33

Issue MNJ 29/10

Issued No. P. 1978 dt 1.11.33.

PRINGS SECTION OCT 1933 & REV SECT

Sec A

1925 R. A. 16/30-31 – H. Ct. of Mys. 36
(Vedamoorthy Balakrishna v. Govt)

General and Revenue Secretariat — Law File No. — of 1933. — [App. E. III—2

Serial No.

From,

Mr. C. L. Gowda, Advocate

Letter dated 28.11.33 stating that the above appeal was heard on 20th, 21st, and 24th instant, and it stands adjourned to 11th proximo for the remaining arguments and requesting to approve of his filing petition under sec 151 C.P.C.

1st) Mr. C. L. Gowda wants to file an appn under sec 151 C.P.C. calling upon the appts to state the approximate value of the property of the Mutt which is the subject matter of the suit.

Subn for orders

ISD 29/11

2nd) In the lower court for instance the advocate's fee assessed by the Court was only Rs 30/- while Mr Seshasastri was paid I think a fee of Rs 200/-.

Mr C. L. Gowda on the authority of O. XX C.C.R 2 11 wants to move the High Court to award the fee on the basis of the value of the subject matter of the Suit, though it is one for a mere declaration. If the High Court were to grant this prayer, Govt need not then incur for the Advocate's fee any extra expenditure - what they pay, they can recover from the plaintiffs.

The action proposed to be taken by Mr C. L. Gowda to file the appn may be

—Contn. Sheet.

37

2925

File No. of 193 ..

General and Revenue Secretariat

approved. He may himself sign the applⁿ & it is not necessary for it to be signed by the chief Secy.

If applt. Mr. Gowda will be informed accordingly

(Gen Secy) 29-11-33

(2nd) I agree

(Home Secy) 29/11

GENERAL SECRT
29 NOV. 1933
No. 65

Office of the Second Member of Council,
30 NOV.
No. 3231

3/12

4/12

4/12

(3rd) Issue

4/12

To

Mr. C. L. Gowda

no. P. 2697 dt 5.12.33 approving of his plan the application proposed.

TYPING SECTION
5. DEC. 1933
GENL. & REV. SECT.

management of the Mutt of the late Sri Bheemarakatte Mutt Matha.

[App. F. III—2

General and Revenue Secretariat | File No. | of 193 (

Serial No.	
	Petition dated 14.8.1934
	From the Agent
	Bheemarakatte Mutt
	camp Coimbatore
	Requesting for restration of the management of the mutt properties, etc. to the Swamijaha.
	13/8 Second Members order.
	To M.C
	Mutt S.P.
	13/8 Memo on the petition. Submitted for disposal and report of action taken
	21/8
	Petition sent to M.C with no. 233
	on 22-8-34.
1/9	Letter No. C 1406/27-28 7/8.9.34
	From the Munsiff Coimbatore
	Submits a report of actions taken by him on the above petition and requests that the management of the Mutt may be restored to the present Swamijaha
	13/9 The main file on the relating to the appeal of the rival candidate Sivaraja pending in the High court, is in the Law Secretariat

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

1560(9)/34 1868

292

3.9.

Bhaemanakatta Mutt — Restoration of Mamool & properties

My File No.	of 193	General and Revenue Secretariat

That Secretariat will be asked to note in what stage the case stands now and also perhaps the file if available there.

11/9 MW

Lawrence)

14/9/34

R. 1. M/room on the file of the Hyd. was posted to 18.6.34 for further arguments.

Dft calling for a further report from Govt. Pleader

17/9

Issue approved

17.9

Issued no. P. 11000 dt 19.9.34.

Sec A 20/9

From,

Mr. C. L. Gandy, Asst. Collr Lease dated 11.9.34 intimating that the appeal stands posted to 1.6.34 as the H.C. has directed that appeals shd be posted and disposed of according to their Chronological order, and that it will receive his undivided attention when it actually comes up for hg.

The result of the appeal which stands posted to 1.6.35 may perhaps be awaited. If appt the Mag. Commr will be informed accordingly.

29/9.

29.9

General and Revenue Secretariat | File No. | of 193..

Serial No.

138) Draft put up at GH's office
150 3/10.

137) Please enquire if this is on this week's Cause list.
BRP 1/10

140) The Cause list for 1st & 2nd inst. only is available. This Case has not come up for Hg. (Swamy Dutt's appeal is still going on).
TSD 3/10.

141) The Regular appeal before the High Ct is likely to be disposed of before the end of this month. The Mun Comr is therefore being informed that the question of restoring the management of the Mutt to the Swamijah may be considered after the disposal of the appeal.
Draft put up may be appd.
Gen Secy
Chief Secy (Mun)
BRP 3/10
3.10.34
BRP 4/10

CHIEF SECRETARY 4 OCT. 1934

OFFICE OF THE SECOND MEMBER OF COUNCIL 15 OCT. 1934 No. 2670

2nd Instn.
RJ 14/10/1934

TYPING SECTT. 19 OCT. 1934 GENL. & REV.

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31

142) Issue
BRP 19/10

Kalmunaikuttu Mutt case

Law File No. 1111 2372 34 of 193 c. 1868 4282

General and Revenue Secretariat

To,

The M.C.

no. P. 1905 dt 22.10.34 informing that the question of restoring the management may be considered after the disposal of the appeal.

To,

143) Hon. Bar. (W.C.) for perusal return

ISD. DSR

GEN. & REV. SECRETARIAT
23. OCT. 1934
MUZRAI BRANCH

23/10/34

The reply sent to the letter is

Sec C 25/10.

144) Returned with Compliments to the Law Section

RJ 23/10 24/10/34

From,

Mr C. L. Gowda, Adv. & the Law dated 31.1.35 intimating that the above case was dismissed with costs, the Court upholding his contention that the finding of the Dt. Judge. Shimoga that the suit was maintainable under Regn VI of 13, is wrong.

145 Submitted for perusal.

Cop. of the Judgt may be issued.

ISD.

146 Mr C. L. Gowda intimate

4282

Serial No.

that the appeal re: the Succession to the Bhimanakatte Mutt case was heard by the High Ct & the appeal dismissed with costs & the Court holding that the Suit against Govt was not maintainable. The question of handing over the management of this Mutt back to the Swamiji may now be disposed of after copy of the Judgt is received. Sub. for perusal.

(1 Member) ✓ 4/2/35

(Secy Muzarai) 147 5/2/35

148 1/2 6/2

149 To,

Muz. Br. (W.C.) for perusal and return 7/2/35

Sabha for perusal 9/2

147 Law Secretary Comps. 9/2/35

Sub 5 papers & answer Cl. upon file

CHIEF SECRETARY 5 FEB 1935

OFFICE OF THE SECOND MEMBER OF COUNCIL 5 FEB. 1935 No. 1402

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

43

Bhimanakatte mutt Case.

Law-File No. of 1934. | General and Revenue Secretariat

From,

Mr. C. L. Gowda

Letter dated 15.3.35 forwarding a Copy of the Judgt: together with a bill for Rs 525-00 for sanction

1st) Copies of the Judgment and decree of the H.C. in the above case are submitted for perusal in the first instance with reference to para 46 supra. The Govt Pleader may be asked to take necessary further action to recover the Costs due to Govt under the decree, in Consultation with the Mng: Commr. (1)

1st) The bill of fees submitted by Mr. C.L. Gowda may perhaps be returned for re-submission after Countersignature as required under rule 58 of the rules for the legal affairs of Govt. (2) This is unnecessary since the fee is not for mere appearance in Court. MNE. 20/3

1st) Meanwhile Copy of the Judgt may be sent to the Mng. Br. after perusal, for necessary action being taken in the matter of restoration of properties suggested in the dismissed file. (3)

Subt for orders.

1st 20/3 - Re (1) This will be done by issuing necessary instructions to the Mng Commr. YES 1/3/35

1st) Re (2) Mr. C.L. Gowda claims a fee of Rs 500/-. The High court has assessed the advocate's fee at Rs. 250/- But Mr. Gowda claims double fee since he has

Serial No.

to argue the case twice over, once before a bench consisting of the late Chief Justice & since no orders were passed then over again before a bench consisting of the present C.J. The case was an important one & seeing the value involves the fee claimed is not unreasonable. It has of course to be paid out of suit fund. The 4th respondent viz the Swamiji was permitted to engage a separate Counsel, viz T.G. Narasimha Iyengar of Shimoga on a fee of Rs 1000/- to argue this appeal. In these circs, the bill of Sri. Gowda may be sanctioned.

15b) Re (3) The suit has been now disposed of only on the ground of it not being maintainable in the form brought. Regarding the merits the High Court pronounced no opinion but as the other hand have thrown doubts on the correctness of the findings of the Dt Judge. Anyway since the suit is now dismissed, there can be no legal objn to handing over the management to the Swamiji.

These are also preliminary issues

On preli issues 2 & 3

(Illegible)

(Illegible)

5'697 / 26/3

(Illegible)

4 Nov

(Illegible)

Note–Contn. Sheet.

(Illegible)

(Illegible)

20/3/35

(Illegible)

22/3/35

Directs 15.35 26/3/35 I agree

(Illegible) 23/3/35 (Illegible) 23/3/35 (Illegible) 26/3/35

45

52/-

Law File No. 24 of 193 4

General and Revenue Secretariat

158) Subt? with a dft G.O. sanctioning the fee. After issue the file may be sent to Mng. Br. for necessary action being taken in the matter of restoration of properties to the Munic as suggested in para 156 supra.

TSD 29/3

159) Issue

MPP 29.3.35

To,

Mr. P. L. Gauba
Dte M.E.
Comptroller
D.C. Shillong
Mr.

G.O. no. P. 5382-86 Law mesc. 16 d 30.3.35 sanctioning the fee.

160) To,

Mng. Br. (w.e.) for taking necessary further action. The file may be returned for being recorded here.

TSD 30/3

OVER

161) Endorsing Govt. regarding restoring the management of the properties to the Municipalities issued in G.O. 178 1534-6/Mcmisc 243-34-3 dated 24.5.35, a copy of which has already

TYPING SECTION, 27 MAR. 1935 G-55 GENL. & REV. SECTT.

GENL. & REVENUE SECRETARIAT 11 1935 SHILLONG

GENL. & REV. SECRETARIAT 1 1935 SHILLONG

Serial No.

been sent to Law Section. The
file is now returned to Law Section
with compliments.
DS 25/6 Reference para 160 supra
25/6
78
Law Section
ue

Copy of the G.O.d no. 35 referred to
in para 161 supra has not been received. The
same may kindly be put up shortly.
Mun. Spl.
V.C.
ISD 7/5

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read:—

Government Order No.1586/Muz.59-22-14 dated 20th October 1922 directing that the Sri Bhimanakatte Matha in the Chirthahalli Taluk and its properties in the Mysore State be taken under Government management and calling for proposals regarding the appointment of a successor to the Matha in place of the swamy who passed away on 9th July 1922.

Government Order No.109-11 Muz.59-22-68 dated 21st July 1925 approving of the nomination of Vedamurthi Bodhacharya to the Gadeship of the Sri Bhimanakatte Matha.

3. Government Order No.614-15/Muz.63-25-6 dated 21st November 1925 passing orders on the proposals of the Muzrai Commissioner for the management of the Sri Bhimanakatte Matha during the - minority of the Swamigalu recognised in the second of the Government orders read above.

4. Government Order No.2361/Muz.422-26-2 dated 18th June 1927 approving of the recommendation of the Muzrai Commissioner in - Mysore to hand over the three vigrahas of Sri Rama, Sita and - Lakshmana and the Damodara Saligrama required by the minor - Swamigalu of the Sri Bhimanakatte Matha, for purposes of worship, to Ved. Ramacharya, guardian of the said minor Swamigalu, subject to certain conditions.

5. Correspondence ending with General Secretary's letter No.P. 1905 dated 22nd October 1934 to the Muzrai Commissioner in Mysore, stating that since the regular appeal on the file of the High Court of Mysore (Bhimanakatte Mutt case) was likely to be disposed of in the near future, the question of the restoration of the management of the properties of the Sri Bhimanakatte Matha to the Swamigalu might be considered after the disposal of the above appeal.

6676 Law
P. 48

6. Government Order No. L.5382-86/~~Ecc.~~ 24-34-16 dated th March 1935 sanctioning the bill for Rs.535/- being remuneration due to [illegible] Advocate, Bangalore for professional services rendered in R.A.176/30 on the file of the High Court of Mysore in the suit relating to the succession to the Sri Shimsanakatte Matha.

7. Letter No. 71/34-35 dated the 3rd March 1935 from the Agent to the Sri Bhimsanakatte Mutha camp Pudakote requesting that early action may be taken for restoring the management of the properties of the Matha to the Swamigalu.

8. Correspondence ending with letter No.1406/27-28 dated 3rd April 1935 from the Muzrai Commissioner in Mysore, stating that as the Regular Appeal on the file of the High Court of Mysore in the suit referred to above had been dismissed, there was no objection to the Swamigalu being placed in possession of the properties of the Matha, as requested by him

Order No. 15574-6/Mcg 243-34-3

Bangalore, dated the 22nd May 1935.

Government are pleased to direct that the Swamigalu of Sri Bhimsanakatte Matha, be placed in possession of the properties of the Mutt. The Muzrai Commissioner is requested to take necessary action in the matter and report the result for the information of the Government.

By Order,

Chief Secretary to Government.

To

The Muzrai Commissioner in Mysore.
Comptroller to Government.
Deputy Commissioner, Shimoga District.

Copy to Law Section.

bnl.y

B 29/5/35 Sub: for perusal [illegible] 31/5 Geusey 28/5 [illegible]

M.C. 13]

FINANCIAL SECTION
20 JULY 1928
No

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore.....19th July.....192 8.

20.

No. 1406 Ex1 / 29-8

P & REV. SECRETARIAT
21 JUL 1928
MUZRAI
D 121

FROM

P. G. D'Souza, Esq., B.A., B.L.,
The Muzrai Commissioner in Mysore.

To

Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

SIR,

I have the honor to submit herewith for kind information of Government copy of letter No.M z.1 M.C.136/26 dated 15th July 1928 - from the Deputy Commissioner, Shimoga District, stating that in the circumstances explained he has refused the permission sought for by the guardian of the Swamigalu of the Sri Bheemanakatte Matha to take the Swami to Udipi in South Canara for Chaturmasya in order to enable him to regain his health by a change of climate.

2. In this connection I beg to state that under the terms of the undertaking reported by me to the Chief Court of Mysore in connection with the delivery of vigrahas etc., the Swamigalu cannot leave the jurisdiction of the Mysore State until the case pending before the District Judge of Shimoga (O.S.No.6 of 25-26 Ved. Balakrishna VS. Government of Mysore and others) is finally disposed of (vide this office letter C.No.52/22-26 dated 13th November 1926) This case stood adjourned to 22nd May 1928 for hearing arguments on points of Law and the Public Prosecutor has not reported as to what progress was made in the matter. A report will be obtained from the Deputy Commissioner and a further communication made in the matter.

I have the honor to be,
Sir,
Your most obedient servant,

for Assistant Commissioner
Muzrai Commissioner.
(Absent from Station)

369-25 S1-12 8/11/12/28

Letter No.Muz.1-A.C.136/26 dated 15th July 1928 from the Deputy Commissioner, Shimoga District to the Muzrai Commissioner in Mysore.

"I have the honor to state that Udipi Ramachar, the special Sheikdar and Guardian of the Swamigalu of the Sri Bhimanakatte -- Matt represented to me on the 7th instant that the Swamigalu is - physically weak on account of the effects of maleria and prayed for permission to take the Swamigalu to Udipi in South Canara for Chaturmasya in order to enable him to regain his health by a change of climate. I had no previous intimation of the Swami's indisposition either from the Amildar or the Guardian except the ----- application of the latter presented to me on the 7th instant. The Chaturmasya commenced from the 12th instant and the application -- presented to me allowed no time for a careful consideration of the proposal made. It looked as though the agent was anxious to rush through the proposal. I was not prepared to be hustled like this unless the need was really urgent. I felt therefore, that the matter required further enquiry before taking action on the aforesaid application and I accordingly proceeded to Thirthahalli urgently with the District Medical Officer and paid a visit to the Srigalavaru on the 9th instant. After examination, the District Medical Officer was satisfied that there was nothing serious the matter with the Swamigalu and that there was a very slight enlargement of the spleen and some consequent digestive trouble. He was of opinion that the illness was not of a nature necessitating the removal of the Swamigalu to Udipi or any other place. He gave instructions regarding diet and medicine and also arranged for the Assistant Surgeon at Thirthahalli paying a weekly visit to Phimanakatte Matt to enquire after the welfare of the Swamigalu. In the circumstances, I have issued an endorsement to the guardian purporting that his prayer cannot be granted.

2. It is likely that the prayer may be renewed after the Chaturmasya is over, in which case, we may have to consider the question afresh in all its aspects before acceding to the request. The question of cost, supervision at head quarters, supervision over the jewellery, idols etc., proposed to be taken outside the State, all these would have to be settled. This question therefore may be -- taken up when the need actually arises.

to you to keep you informed as regards the illness of the --- swamigalu, who is under Government protection and about whose welfare special attention has to be paid. I have asked the - Amildar to permit the entertainment of an extra cook for -- personal attendance on the Swamigalu."

"C o p y"

For Muzrai Commissioner.

14 MAR 1929

WD 546-GPB-50,000-4-9-28

192 9

From

The Muzrai Commissioner in Mysore,

Bangalore.

To

The Public Prosecutor,

Shimoga

Dated 13th March 1929.

Despatched

Received

General No. 1407

No. 27-8

Enclosure No.

Sir,

Referring to your letter No.215 dated 23rd April 1928 re O.S.No.6 of 27-28 on the file of the District Judge, Shimoga, and subsequent correspondence, I have the honor to request to be informed whether arguments on points of law were heard on 2nd May 1928 and whether the case so far as Government is concerned was disposed of subsequently. If not, the present stage of the case may be intimated for the information of Government.

I have the honor to be,
Sir,
Your most obedient servant

(Sd.) M. Chennaraj Urs,
For Muzrai Commissioner.

GENERAL SECRETARIAT
15 MAR 1929
MUZRAI

-2-

Memo.

1407/27-8 Copy of the above is forwarded with compliments to the Secretary to

D/1405

the Government of His Highness the Maharaja of Mysore, Financial Department, for favour of information.

M. Hemmingsen

Assistant Commissioner
for Muzrai Commissioner.
Absent from Station

45

M. C. 13]

59

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE, 6

Bangalore, 20th March 1929.

27

No. 1406/27-28

1405/4

D.1437

FROM

P. G. D'Souza, Esq., B. A., P.L.,

~~The~~ *Muzrai Commissioner in Mysore.*

CENL. & REV. SECRETARIAT. 22 MAR 1929 MUZRAI

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,

Secretary to the Government of His Highness

the Maharaja of Mysore.

Financial Department.

SIR,

In continuation of this office Memo C. No.1406/27-28 dated 14th March 1929 re Civil Suit connected with the succession to the Sri Bhemanakatte Matha, I have the honour to state that it is reported by the Public Prosecutor, Shimoga Division, that arguments on questions of law were partly heard on 23rd February 1929 and that the case stands adjourned to 20th March 1929 for further arguments.

I have the honour to be,

Sir,

Your most obedient servant,

P. Bheemaiya Ms 22/3/29

Assistant Commissioner

for Muzrai Commissioner.

Absent from Station

Filed with previous papers.

The receipt of the report may be awaited.

RS 23/3

23/3

27/3

M. C. 13]

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE.

Bangalore, 20th June *1929*

No. 1406/27-8.

D. 1935

FROM

P. G. D'Souza, Esq., B.A., B.L.,
The Muzrai Commissioner in Mysore.

FINANCIAL SECRETARY
20 JUNE 1929
No

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

SIR,

In continuation of this office letter C.No.1406/27-28 dated 21st March 1929, I have the honor to state that it is intimated by the Public Prosecutor, Shimoga, that O.S. No.6/25-26 on the file of the District Judge re succession to Bheemanakatte Matha, stands adjourned to 24th instant for hearing further arguments on questions of law.

I have the honor to be,
Sir,
Your most obedient servant,

for MUZRAI COMMISSIONER.
(absent from Station)

Submitted for perusal with the file. No further reports required. May be noted. — Bi-weekly report (D. 1982) stating that the case was adjd. to 18th July 29. is placed on the file.

27.6.29.

2.7.

27/7

8

M. C. 13]

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore,.....27th June.....192 9.

28.

No. 1406
27-28-9.

FINANCIAL SEC
28 JUNE 1929
No 697

FROM

P. G. D'Souza, Esq., P.A., B.L.,
The Muzrai Commissioner in Mysore.

SEC & REV SECRETARIAT
29 JUN 1929
MUZRAI
NO. 1982

FINANCIAL SECRETARY
28 JUNE 1929
No

To

P. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

9 1935

SIR,

In continuation of this office letter dated 20th June 1929, I have the honor to state that it is reported by the Public Prosecutor, Shimoga Division, that O.S. No.6/25-26 on the file of the District -- Judge's Court, Shimoga (Ved Palakrishna Vs. Government of Mysore and others) was adjourned to 18,19th July 1929 for want of time on the -- 24th Instant.

I have the honor to be,
Sir,
Your most obedient servant,

Muzrai Commissioner.

Vide Dis. 1935 below
for the papers disposal

M. C. 13]

FINANCIAL SECRETARY
3 SEP 1929
No. 2945

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE, 7

Bangalore,....31st August.....1929.

No. 1406/27-8

FROM

A.K.Syed Taj Peeran, Esq., B.A.,
Muzrai Commissioner in Mysore.

GEN'L & REV. SECRETARIAT
4 SEP 1929
MUZRAI

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

SIR,

In continuation of this office letter C.No.1406/27-28 dated 28th June 1929, I have the honor to inform you that it is reported by the Public Prosecutor, Shimoga Division, that arguments in O.S. No.6/25-26 on the file of the District Judge, Shimoga (Ved.Balakrishna Vs. Government of Mysore) were heard on the 6th instant and the case reserved -- for orders.

I have the honor to be,
Sir,
Your most obedient servant,

for Muzrai Commissioner.
(absent from station)

may be flwd after pensnl.
No further report may be awaited

M. C. 13]

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore, 26th September 1929.

27

No. 706
28-9.

FROM

A. K. Syed Taj Peeran, Esq., B.A.,
The Muzrai Commissioner in Mysore.

GENERAL SECRETARIAT
28. 9. 1929
MUZRAI
19. 571

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

FINANCIAL SECRETARIAT
27 SEP. 1929
No 4.7-6.

SIR,

G 391
28 A
14-9-29
aag 6/9

In continuation of this office letter No.1406/27-28 dated 3rd September 1929, I have the honor to state that it is reported by the Deputy Commissioner of the Shimoga District that arguments on questions of law on the several issues in the case relating to the succession to the Bheemankatte Matha-the Chief of which was - about the maintainability of the suit were heard on 6th August -- 1929 and that orders have not yet been pronounced. A final --- report will be submitted as soon as the Deputy Commissioner's -- further reply is received.

I have the honor to be,
Sir,
Your most obedient servant,

Muzrai Commissioner.

2249/29

Subs with the Secs file.
Receipt of the report if approved
may be awaited.

28 Cb.
1/10. 1st Member 2/10. 10/10/29

11

Letter No. Muz. A.C. 3/26-27 dated the 11th January 1930 from the Deputy Commissioner, Shomoga District, to the Muzrai Commissioner in Mysore, Bangalore.

Referring to your D.O. letter No.706/28-29 dated 16-12-29 enquiring whether orders have since been passed in O.S.No. 6/25-26 on the file of the District Judge's Court, Shimoga, (Vedamurthi Balakrishna Vs Government of Mysore and others), I have the honor to state that from enquiries made, it is ascertained that orders will be passed in the matter by him on the 31st instant to which date the case has been posted.

23/1/30

The orders of the District Judge will be communicated to you in due course.

GENL & REVENUE CIRCULAR
23 JAN 1930
1149
MUZRAI.

FINANCIAL SECRETARY
22 JAN 1930

No. C 706
28/1

Office of the Muzrai Commissioner in Mysore.
Dated, Bangalore, 21st January 1930.

M e m o.

Copy of the above is forwarded with compliments to the Secretary to the Government of His Highness the Maharaja of Mysore, Financial Department, for favor of information.

For Muzrai Commissione

Submit Head for perusal
25/1 27/1/30

27/1

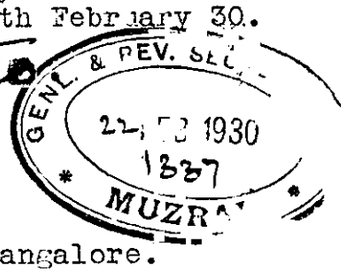
27/1

9575
26/1

No. 1406/27-8

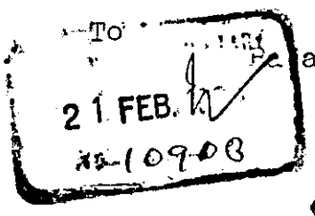
Enc. one

Office of the Muzrai Commissioner
In Mysore.
Dated, Bangalore, 18th February 30.



From

Rajakarya Pravina
P.G.D'Souza, Esq., B.A., B.L.,
Muzrai Commissioner in Mysore, Bangalore.



To

Rajaseva Parayana
B.Srinivasa Iyengar, Esq., B.A.LL.,L.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
Financial Department.

Sir,

In continuation of this office Memo C.No.1406/27-28 dated 22-1-1930, I have the honor to forward herewith for favour of information - copy of letter No.241 dated 14-2-30 from the Public Prosecutor, Shimoga Division, intimating that O.S. No.6/25-26 on the file of the District Judge, Shimoga, re. succession to the Sri Bheemanakatte Matha was dismissed with costs on the ground that the congnizance of such a suit by the Civil Court is barred.

The Deputy Commissioner will be requested to obtain a copy of the order and to take action to recover the costs from the Plaintiff. copy of the order will be submitted for perusal as soon as it is received in this Office.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

Letter No.241 dated 14th February 1930 from the Public Prosecutor, Shimoga Division. to the Muzrai Commissioner in Mysore,

---

Re. O.S.No.6/25-26 , District Judge's Court, Shimoga (Balakrishna vs Government. Bhimanakatte Matha succession suit.)

In continuation of my letter No. 44 dated 9-8-29 on the above subject, I have the honor to state that the Court passed orders on 12-2-1930 dismissing the suit with costs on the ground that the cognizance of such a suit by the Civil Court is barred.

****

" C o p y "

For Muzrai Commissioner.

18/2

M. C. 13]

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Camp ~~Bangalore~~ Mysore 14th June 1930.

C. 1406/27-28

No. ~~[illegible]~~ 18

Ends one file

GEN & REV. SEC.
20 JUN 1930
2010
MUZRAI

18 JUN
No.

FROM

Rajakaryapravina

P. G. D'SOUZA, ESQ., B.A., B.L.,

Muzrai Commissioner in Mysore.

Muz 399-29-1.

TO

Rajaseva paravana

B. Srinivasa Iyengar, Esq., B.A., B.L.,

Secretary to the Government of His

Highness the Maharaja of Mysore,

Financial Department.

SIR,

In forwarding herewith a copy of the judgment in O.S.6/25-26 on the file of the District Judge's court Shimoga, regarding the Bheemanakatte Succession suit, I have the honor to state as follows:-

The right of the present Swami (4th defendant in the above suit) to the peeta of the Bheemanakatte Mutt has now been recognised. ~~in the above suit~~. I understand that no appeal has been filed against the judgment. The Swami has now attained his majority and as he has been repeatedly requesting that the management of the properties belonging to the mutt which are under Government management may be restored to him, I visited the mutt during my last ~~visit~~ tour in the Shimoga District and interviewed the Swami. The relations between the Swami and Mr. Ramachar, the present guardian are not satisfactory nor did Mr. Ramachar seem to me to be the proper type of man to be given such an important charge. I have not been satisfied also with the management by the local officers. Some of the properties are in Udipi while others are in the Nagar taluk and it is not possible for a Revenue Officer to exercise effective control over the management. It is true that the income of the institution has substantially improved and also a large sum has been saved and invested. At the same time we cannot continue the existing state of things indefinitely. I am

... however of opinion that in restoring the properties we should adopt proper precautions to see that accounts are regularly ---- maintained. The Government have the right to examine the accounts periodically and interfere in case of gross mismanagement. Having regard to the past history of most malnad mutts, I consider such a precaution essential, the more so as the Swami is young and may yield to unwholsome influences. I propose therefore that the management of the properties be restored to the Swami On the following conditions:-

(a) That the Swami should enter into an agreement that he will take over all claims and liabilities, pertaining to the --- properties as they stand at the time of transfer and -- will have no claim over Government or any of its officers in regard to the management of the properties during the period in which they were under Government management or thereafter.

(b) That a proper scale of expenditure should be fixed with the approval of the Muzrai Commissioner prior to the transfer of management and any important deviations therefrom should should not be made except with his approval for a period of five years.

(c) No alienations of a permanent character, mortgages of temple properties and utilization of invested funds should be -- made except only with the previous approval of the Muzrai Commissioner.

(d) That the Swami should submit an annual statement of income and expenditure within one month after the close of the official year and should the Muzrai Commissioner consider the financial position of the matt requiries any economies ------ to be effected, the Swamigalu will be bound to give ---- effect to the same.

(e) On failure ~~In future~~ to comply with any of the above conditions Government will have the right to resume management of the properties.

(5) The Manager of the Mattia should be appointed with the permission of the Muzrai Commissio If the properties are properly managed for a period of 5 years Government may at their discretion relax any of the above conditions.

If Government generally approve of these proposals, I shall ----- discuss the matter further with the Swamigalu and get his consent. I have told him that it will not be possible for me to recommend any unconditional restoration.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

IN THE COURT OF THE DISTRICT JUDGE, SHIMOGA.

O.S.6/25-26.

Dated the 12th. day of February, 1930.

Present:- B.R.Krishnamachar Esq., B.A., B.L., District Judge.

Plaintiff:- Vedamurthi Balakrishna minor by next friend father B.K.Lakshminarayanachar.

VS

Defendants:- 1. The Government of Mysore represented by its Chief Secretary, Bangalore. 2. The Swami of Bhandarkere Math Sri Vidyarnava Thirtha Sripadangalavaru, since deceased by legal representative Sri Vidyamanya Thirtha Sri padangalavaru minor by guardian Agraharada Lakshminarayana Upadhya. 3. The Sishyas of Sri Bhimanakatte Math represented by the following who are the leading representatives thereof:-

(a) Hadigallu Nagappa.

(b) Mundukodu Venkatadasachar.

(c) Hadigallu Naranappa.

(d) Kadasur Kadappa.

(e) Halandur Subbanniah.

(f) Hayagrivachar.

(g) Valageri Gururayachar.

(h) Hunsavalli Venkataramancahar.

(i) Devasthanada Padmanabhiah.

4.. Udipi Bodhachar alias Sri Raghutilaka Swami, minor by guardian Udipi Ramachar.

SUPPLEMENTAL DEFENDANTS.

5. Raghupravichar. 6. Narayanachar. 7. Gurachar 8. H.Subba Rao. 9. Lakshminarayanachar. 10. Pandurangappa. 11. Manjappa. 12. BhimaRao minor by guardian Madhyastha. 13. S.Venkata Bhatta. 14. Ajamila alias Anantharama Upadhya. 15. H.Subrayachar. 16. G.Hayagrivachar. 17. S.Vishnu Murthi Bhatta. 18. H.Nagesha Rao. 19. H.Vengata Rao. 20. H.Ramakrishnappa. 21. K.Gururajachar. 22. H.Sreenivasachar. 23. K.Anantharamachar. 24. M.Narasimhachar. 25. B.Huchachar. 26. H.Rama Bhatta. 27. Vyasachar. 28. Krishna Bhatta. 29. Mariyappa. 30. Manjappa. 31. Vengata Rao. 32. Seetharamiah. 33. Sreenivasachar. 34. Venkataramana Bhatta.

Venkataramana Bhatta. 35. Gururayachar. 36. Vengataramanachar. 37.Vedavyasachar.

PREAMBLE.

1. Suit for declaration that the minor plaintiff is the only person entitled to succeed to the Peetha of, and to all the properties, rights and privileges of Sri Bhimasethu Munivrunda Math as the duly nominated successor of the late Swami and that the nomination and ordination of the 4th, defendant by the 2nd. defendant is absolutely illegal and void and for restraining the defendants from doing any acts inconsistent with the right of the plaintiff to succeed to the peetha.

2. The suit was filed on 7-10-1925.. The written statements of defendants 1,2 & 3a, 3b, 3c, 3d were filed on 25-7-1927. The written statement of defendants 3e, 3f, 3g and 3h were filed on 25-7-1927. The written statement of the 4th. defendant was filed on 5.7-1927. The written statement of supplemental defendants 5 to 17 was filed on 4-8-1927. The plaintiff's reply statement was filed on 25-10-1927.

3. The suit came on for settlement of issues on 22-11-1927.

4. The following issues were framed:-

(1) Is the suit maintainable against the 1st. defendant?

(2) Has the Court got jurisdiction to try the suit?

(3) Is the recognition of the 4th. defendant an act of prerogative not liable to be questioned by the Civil Courts?

(4) Is the suit for mere declaration not maintainable as pleaded.

(5) a. Is the settlement deed referred to in para 4 of the plaint genuine and the nomination in favour of the plaintiff valid and binding on the defendants?

(5) b. If so, what is its legal effect?

(6) Is there any custom or usage that the candidate selected should be below 16 years of age?

(7) To what relief is the plaintiff entitled?

5. The suit came on for hearing arguments on questions of law i.e. issues 1 to 4 on 14-12-1927 and then by adjournments on 6-8-1929.

6. No witnesses have been examined and no documents have been

admitted in evidence.

JUDGMENT.

1. This suit relates to the succession of the peetha of a Madhwa Mutt popularly known as " Sree Bheemanakatte Math " situated in Tirthahalli Taluk.

This Mutt is said to own valuable properties both in and outside Mysore State, and it would appear that there are several sacred idols of antiquity in the Mutt building which are held in great veneration.

2. Plaintiff's case is as follows:-

Sree Raghu Bhushana Thirtha Sree Padangalavaru, who was the late Swami and occupant of the peetha in the said Mutt passed away on 9-7-1922.

During his last illness, he executed a deed of settlement dated 30-6-1922, duly nominating the present plaintiff (Vedamurthi Balakrishna) as his successor to the peetha and directing the 2nd. defendant who is the SWAMI of the Dwandwa Mutt of Udipi - to ordain (i.e. to initiate and give Ashramam) him in case he nimself did not do so and declaring that no other nomination would be valid.

The ordaining of the plaintiff did not, however, take place during the said Swamy's life-time as the plaintiff was not with him at the time of his death.

The Deputy Commissioner of Shimoga District after due enquiry held that the plaintiff had been duly nominated and that he was entitled to succeed to the peetha, and the Muzrai Commissioner supported the recommendation of the Deputy Commissioner.

When the matter came up before the Government (who are arrayed as the 1st. defendant in this case) who are managing the properties of the said mutt, they decided against the plaintiff on the ground that he was not a Bala Brahmachari, interpreting that term to mean that the nominee must be below 16 years of age. The said interpretation is wrong and untenable as it is opposed to prevailing usage; and as the plaintiff was only about 13 years old at the time of the nomination, the said objection will not avail. "Bala Brahmachari" is one who is from his childhood an unmarried celibate, and the plaintiff answers that description.

The 2nd. defendant has a right to nominate a successor to the peetha of Sree Bheemanakatte Mutt only when the last incumbent and the Swami of that Mutt has not nominated his successor. He can perform only the rituals or ceremonial acts of ordination when the last incumbent has nominated his successor. The 2nd. defendant nevertheless nominated the 4th. defendant Udipi Bodhachar alias Bodharayachar to succeed to the peetha, and ordained him also during the inauspicious period of Chaturmasya; and the Government have accepted and approved the said nomination although it was against the wishes of the sishyas or disciples, and have passed orders on 14-3-25 adversely to plaintiff.

The nomination and ordination of the 4th. defendant by the 2nd. defendant is opposed to law and usage governing the succession to the peetha of this Mutt and they do not affect the plaintiff's right to succeed to the office.

Hence the suit for a declaration (a)that the plaintiff is entitled to succeed to the office or peetha of Sree Bheemanakatte Mutt, and to enjoy all the privileges, rights and properties belonging to the same;

(b) that the nomination and ordination of the 4th. defendant by the 2nd. defendant which have been approved by the Government(1st- defendant) are illegal and void;

and for an injunction restraining the defendants from doing any acts prejudicial to plaintiff's rights.

3. The Government of Mysore(1st. defendant) resist the suit on the following grounds:-

(a) That this suit does not lie against the Government as the relief claimed does not come within the purview of Section 2 of Regulation VII of 1923 (A regulation to provide for suits against Government)

(b) That there is no cause of action against the Government and the Government is not therefore a necessary party;

(c) That the plaintiff has no right to question the legality or otherwise of the order of the Government, dated 14-3-1925, and this Court has no jurisdiction to consider the same.

Under the Rules in force regarding the recognition of

succession to the peetha of a Mutt (Rules of 1880), His Highness the Maharaja has power to recognose the succession of a Guru for the purpose of enabling him to enjoy all state grants in land or money and the customary ~~grantsxinxlandxxxxxxx~~ ' Maryades and Sirudus granted by the Soverign; nonrecognition by His Highness will involve the resumption of all such grants etc.

As the order of Government in question is the order of His Highness under the powers vested in him under the Rules mentioned above, this Court has no power to pass a decree compelling His Highness to recognise the person declared by it as Guru for the purpose of enjoying state grants etc. as the plaintiff prays for in para 28 a of the plaint. and (d) That under the powers vested in the Government under the ~~M~~ Muzrai Regulation of 1913 and the Religious and Charitable Institutions Regulation of 1927, tthe Government is managing the properties of the 4th. defendant - who is the recognised Guru - is a minor.

Defence of defendants 2 and 4 is to the following effect:-

(1) This suit does not lie within the jurisdiction of this Court as it relates to matters wherein Government have power to pass orders and have passed orders under Sec. 40 of Regulation VII of 1927 corresponding to Section 38 of Regulation VI of 1913.

(ii) The suit for a declaration without asking for consequential relief, to wit, for the possession of properties is not maintainable under Sec. 42 of Specific Relief Act.

(iii) The deed of settlement relied on by the plaintiff is not ~~g~~ genuine and even if genuine; it confers no legal status or character on plaintiff.

No nomination is valid without first initiating the nominee into sanyasam.

And the mere nomination of plaintiff without ordaining him into the order of sanyasa has no legal effect.

The Mutt over which the 2nd. defendant presides (Sree Bhandarkere Mutt) and the plaint Mutt (Sree Bheemanakatte Mutt) have each the right of selecting a successor to the other whenever a vacancy occurs in the peetha or office - which right is known as " Dwandwa right";

And in the present case, the 2nd. defendant has the right of selecting a successor to the plaint Mutt and give him the Ashrama as the late Swami of plaint Mutt had not ordained any one into san-

asa and nominated him to succeed.

(v) The usage of the Mutt in question is that the candidate selected for the peetha should be a Bala Brahmachari- that is to say, one below 16 years of age at the time of his initiation; and plaintiff being past that age is precluded from being ordained into sanyasam and occupy the peetha of the plaint Mutt.

It is not true that he was 13 years old at the time of the alleged nomination.

(vi) 4th. defendant was not nominated and ordained by the 2nd. defendant during Chaturmasya period; nor were the ceremonies of initiation performed during Chaturmasya.

4th. defendant was duly ordained and appointed to succeed to the peetha of the plaint-Mutt by the 2nd. defendant and the Government have recognised the said succession after making necessary enquiries.

5. Nine sishyas of the plaint Mutt were grouped together and were designated as defendant 3 in the plaint and they filed written statements supporting plaintiff's case.

After the suit was published under order 1 Rule 8 C.P.Code for the information of all sishyas as persons interested in the subject-matter, 33 persons appeared who were arrayed as supplemental defendants - Numbers 5 to 37. They filed a written statement supporting 4th. defendant's case.

6. Before going into the merits of the plaintiff's case and recording evidence, the following issues of law were taken up for consideration (1to 4)

(i) Is the suit maintainable against Government, 1st. defendant?

(ii) Has the Court got jurisdiction to try the suit ?

(iii) Is the recognition of the 4th. defendant an act of prerogative not liable to be questioned by Civil Courts ?

(iv) Is the suit for mere declaration not maintainable as pleaded ?

7. Issue No. I

Regulation No. VII of 1923, which is an enactment providing for suits against the Government of Mysore, contains

that a suit to which the Government of Mysore is a party as a defendant may be heard and determined by the principal Civil Court of original jurisdiction having jurisdiction over the subject-matter of the suit, if the claim in respect of which the suit is brought is for any of the reliefs specified in Section 2 - one of the said

reliefs being the rectification or the cancellation of any instrument. Sec. 2 Cl (e). In the said Regulation, the instrument'instrument' has not been defined.

It is defined in the Mysore Stamp Regulation (No. II of 1900) in section 2 Cl 14 as follows:- " Instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded"

Mulla & Pratt, in their commentaries on the Indian Stamp Act (1924 Edition, page 139), have stated:- " An instrument is a writing and generally imports a document of a formal legal kind (Strond). The definition is extensive, and an entry in a register signed by thumb-impression was held to be an instrument (I.L.R. 36 All 11. F.B.)

Beal's Cardinal Rules of Legal Interpretations, Page 55 contains the follwoing:- " An instrument seems to embrace contracts, deeds, statutes, will, orders in council, orders, warrants, schemes,letters-patent Rules, Regulations, Bye-laws whether in writing or in print, or partly in both. In fact, any written or printed document that may have to be interpreted by the Courts. "

Plaintiff's prayer in this case is for a declaration that he is entitled to succeed to the peetha of Sree Bheemanakatte Mutt and consequently to enjoy all the properties, rights and privileges incidental thereto, and that the 4th. defendant who has been nominated and ordained by the 2nd. defendant to the said peetha and whose nomination has been recognised by the Government is not entitled to succeed.

The Government of Mysore in their order dated 14-3-1925, passed in Muzrai appeal No. 11/23-24, refused to recognise plaintiff's right to succeed to the peetha of the said Mutt and directed the Swami of Sree Bhandarkere Mutt (the 2nd. defendant) to select a competent person and report the name of the nominee for their approval as required by the standing orders. (Vide the copy of the said Government order which has been filed on behalf of the 4th. defendant.

4th. defendant was selected and reported and the Government approved the nomination.

The order of the Government whereby plaintiff's alleged or supposed right was not recognised (in others words extinguished) is, in my opinion, an instrument.

Plaintiff questions the right of the Government to interfere in the matter of selection and nomination to the peetha of Sree Bheemanakatte Mutt, and questions the propriety and the legality of their order, alleging that he had been duly nominated by the late Swami of the said Mutt according to the prevailing practice and custom and has impleaded the Government as a party defendant to compel them to recognise his right to succeed to the said Peetha.

This suit is therefore virtually for the rectification as well as for the cancellation of the said Government Order above quoted.

I hold therefore that the suit is sustainable as it appears to fall under Section 2, clause (e) of Regulation VII of 1923.

8. ISSUE No. II. Has the Court got jurisdiction to try the suit and ISSUE No. III. Is the recognition of the 4th. defendant an act of prerogative not liable to be questioned by the Civil Courts?

(A). Section 9 of the Civil Procedure Code says:- " The Courts shall (suoject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

EXPLANATION:- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rights or ceremonies. "

The suit by plaintiff in this case is one for a religious office. and plaintiff claims to be entitled to succeed to that office and seeks for a declaration in that behalf as against an intruder who is alleged to have wrongfully usurped the same. The holder of the said office is said to be entitled to enjoy some properties, rights and privileges.

I think that plaintiff can sustain this suit, which is a suit of a civil nature, if its cognizance were not otherwise expressly or impliedly barred.

(B). I do not think that it is disputed that the Mutt in question (Sree Bheemanakatte Mutt) is a Muzrai Institution enjoying Government grants. It should therefore be governed by the Muzrai Rules and Muzrai Regulations which are in force in the state.

Revised Rules for the succession of Gurus to Mathas have been printed on pages 161 and 162 of the Mysore Muzrai Manual with a pre-

amble and I reproduce the same here:- (No. 3831-8-R 679 dated 1st. October, 1880.)

1. It has been brought to notice that the established custom of obtaining His Highness the Maharaja's previous consent to nominations of successors to religious Mathas has not been followed in recent years in a few individual instances.

2. This custom which is an ancient one was followed even during the British administration of the state by reporting every succession to a Matha for the orders of the Chief Commissioner.

3. The omission to report in a few case has led to the succession of the Guruship of persons who from their antecedents or lack of learning and qualifications do not always command the esteem and regard of their disciples.

4. The Government of His Highness the Maharaja are of opinion that it will advance the public good to enforce due observance of the custom as regards those Mathas which enjoy Government grants.

5. It is therefore ordered that the following Rules on the subject will be enunciated to all the Mathas in the state.

RULES.

(i) Every succession to a Matha enjoying Government grants in land or money or honours granted by the Sovereign should receive the approval of His Highness the Maharaja. Such approval should ordinarily be obtained by previous application to His Highness in the Muzrai Department.

(ii) To provide as far as possible against the contingency of a Guru dying suddenly, he may as an act of ordinary prudence fix upon one or more eligible persons for an eventual selection by himself as his successor and obtain His Highness' opinion as to the eligibility of such persons. The Guru may then in due time select one of them to succeed him.

(iii) Should the Guru fail to obtain His Highness' approval to an eligible candidate or candidates, and should he on the sudden approach of death or fear of death select a successor and give the Ashramam to him, the recognition of his successor will, for the purpose of enabling him to enjoy all State grants in land or money, rest with his Highness, who in exefcising his discretion in the matter will be guided by the opinion of the community and the personal qualifications of the successor.

(iv) Should a Guru die without giving ashramam to a successor surviving him, then a proper successor shall be selected by the community interested with the consent of His Highness.

(v) Non-recognition of a successor by His Highness will involve the resumption of all State grants in land or money with and the customary Mariades and Birudus granted or enjoyed under authority from the Sovereign"

On page 168 of the same manual we find:- "Government are therefore pleased to lay-down that on questions relating to the use of insignia (i.e. Honours to heads of Mathas), parties be not referred to Civil Courts, but that all such questions be submitted to Government for orders and that the orders passed by Government be strictly enforced"

Plaintiff in this case rightly approached the Government to recognise and approve his nomination to succeed to the religious office in question. The District Muzrai Officer i.e. the Deputy Commissioner Shimoga District, who was directed to hold an enquiry and submit his report sent up a recommendation in plaintiff's favour and the Muzrai Commissioner supported the same. When the matter came up before His Highness' Government, they were not pleased to accept the said recommendation on the strength of the case reported in 34 I.C. 875 and requested the late Swami or Guru of the Dwandwa Mutt (the 2nd. defendant to select a competent candidate and make a report.

Under the Rules mentioned above, the powers of His Highness' Government are absolute in the matter of appointing or approving successors to Mathas enjoying grants by the Sovereign and the said powers and acts done thereunder cannot be questioned in Civil Courts.

The right of the Government in the matter of appointing or approving successors to Mathas enjoying grants by the Sovereign has not been in the least trenched upon or abrogated or repealed either in the Mysore Muzrai Regulation (No. VI of 1923) or by the Mysore Religious and Charitable Institutions Regulation (No. VII of 1927) although they purport to consolidate and amend the law relating to Muzrai Institutions and other Religious and Charitable Institutions in Mysore. Those Regulations are intended to provide for the following matters only

(a) Undertaking by the Government of the management of a religious or charitable institution.

(b) Reference by the Muzrai officer to District Judge in cases of dis-

pute arising as to whether any charitable or religious trust has been actually constituted.

(c) Enquiry by the Muzrai Officer regarding alleged mismanagement of property of a religious or charitable institution.

(d) Enquiry by the Muzrai Officer regarding alleged wrongful alienation of property belonging to a religious or charitable institution.

(e) Orders by the Muzrai Officer for the utilization of the property belonging to a religious or charitable institution for similar purposes when the original object of the trust in whole or in part has failed.

(f) Enquiry by the Muzrai Officer regarding alleged wrongful alienationof Inams granted by the Government for the upkeep of religious or charitable institutions.

(g) Undertaking by the Government of the management and possession of the properties of the Mathas or other institutions of a similar nature.

(H) Enquiry into allegations of mismanagement of property by the Head of a Matha and

(i) Enquiry into disputes about the office of a poojari and other temple servants.

The right of the Government to approve or not to approve a successor to the peetha of a Mutt, which enjoys Government grants, has been preserved intact and is not taken away by the above-mentioned Regulations. I am therefore of opinion that the cognizance of plaintiff's suit by Civil Courts is expressly barred by the Rules above quoted although it is a suit of a civil nature.

I hold therefore on the II issue that this Court has got no jurisdiction to try the suit; and on the III issue that the recognition of the 4th. defendant by Government as the successor to the office in question is an act of prerogative not liable to be questioned by the Civil Coutts.

9. ISSUE No.IV. The properties of the plaint Mutt are under Government management from about the time of the death of the late Swami. They have been managing them on behalf of the rightful owner as trustees. As such, I think it is not necessary for the plaintiff to ask for possession of those properties in this suit. (Vide a similar case reported in VII Mysore Law Journal page 41)

I hold therefore that the suit for a bare declaration is main-

~~trable~~

tainable.

10. As a result of my findings on issues II and III, plaintiff's suit fails and is consequently dismissed with costs. (Separate sets)

One set of costs for defendant No. I and another for defendants 2 and 4.. Advocate's fee Rs 30/- only.

Pronounced in open Court.

(Signed) B.R.Krishnamachar.
District Judge.
12-2-1930.

C O P Y '

N.S.Krishnamurthi
for Public Prosecutor,
Shimoga Division.

Appendix F G—1

SUBJECT.....

.....

.....

Section Misc

File No. 395-29

Serial No. 2

No. 94

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Asst. Commr.

in Mysore

Date of issue 14/7/30

Signed by V. Sethuramanyedathi

Sir,

"Restoration of the management of the Sri Bheemanakatte Mutt properties to the Swamijalu"

With reference to Correspondence ending with letter no: C 1406/27-28 dated 18.6.30 on the subject referred to above, I am directed to enquire what the age of the Swamijalu is, whether he has completed his education and appears

over

List of enclosures.....

Copied by.....

Examined by.....

WD063—GPB—29,003—1-8-29

in your opinion Capable of managing the temporal affairs of the mutt

With regard to the Conditions suggested by you, I am to request you to be so good as to state why Condition (a) is necessary. If the assumption of management by Govt was under Sec. 25 of the Regulation, the head of the mutt can have no claims against Govt on grounds of alleged improper management nor can he refuse to take over liabilities Contracted by Govt in the interest of the mutt during the time the management was in their hands.

As regards Condition (c), while the portion of it which refers to utilisation of invested funds is all right, it is not clear why it is proposed to add refer to alienations of a permanent Character of certain lands and other properties of the mutt and the temple inasmuch as

G. R. S. App F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(Continuation sheet draft form.)

there can be no such alienations.

I am to request the favor of a very early reply

I have etc.

11.7.30

for Fin: Secy

10/7.

WD 0327—GPB—10,000—18-5-27

12th July 30

Rajakaryapravina
P.G. D'Souza, Esq., B.A., B.L.,
Muzrai Commissioner in Mysore.

Restoration of the management of the Sri Bheemanakatte Mutt properties to the Swamigalu.

With reference to correspondence ending with letter No. C. 1406 of 1927-28 dated the 18th June 1930 on the subject referred to above, I am directed to enquire what the age of the Swamigalu is, whether he has completed his education and appears in your opinion capable of managing the temporal affairs of the Mutt.

With regard to the conditions suggested by you, I am to request you to be so good as to state why condition (a) is necessary If the assumption of management by Government was under Section 25 of the Regulation, the head of the Mutt can have no claims against Government on grounds of alleged improper management nor can he refuse to take over liabilities contracted by Government in the interest of the Mutt during the time the management was in their hands.

As regards condition (c) while the portion of it which refers to utilization of invested funds is all right, it is not clear why it is proposed to refer to alienations of a permanent character of Inam lands and other properties of the Mutt and the temple inasmuch as there can be no such alienations.

I am to request the favour of a very early reply.

I have the honor to be,
Sir,
Your most obedient servant,

V Subramanyasastri
for Secretary to Government,
Financial Department.

9s 12/7

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore,....23rd...July.....*1930* .

24.

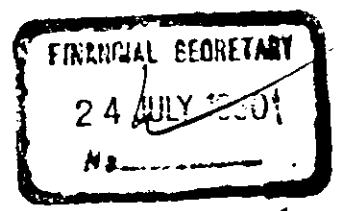
No. 1406
27-8

FROM

Rajakaryapravina

P. G. D'SOUZA, ESQ., B.A., L.L.,

Muzrai Commissioner in Mysore.



To

Rajasevaparayana
B. Srinivasa Iyengar, Esq., B.A., B.
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

Muz 399-29-3.

SIR,

With reference to your letter No.94/Muz.399-29-2 dated 12/14th July 1930, regarding the restoration of the management of the Sri -- Bheemankatte Mutt properties ~~of~~ to the Swamigalu, I have the honor to state that the Swamy has now completed his 19th year and so far as his education is concerned I am not confident that he has attained the standard which one holding his position should attain. I am also sceptical about his capacity to manage the temporal affairs of the Mutt at present. However, as we cannot prevent him from taking the management of his properties after he attained his age, am of opinion that the properties may be handed over to him with the conditions that I have already suggested in my letter of the 14th June. As regards the necessity for an indemnity clause in -- the bond to be executed by the Swamigalu Sec.25 of the Regulation does not specifically state that the Swamigalu will have no claim over Government or any of its officers in regard to the management of the properties during the period in which they were under ----- Government management or thereafter. Hence I submit that such a condition is necessary to safeguard the interests of Government -- and its officers. Such a condition was obtained when prooerties which were under Government management were handed over to the Vyasaraya Mutt and the Uttaradi Mutt on previous occasions.

As

34

As regards condition (c) while it is true that alienation of a permanent character of inam lands and other properties of the Mutt by the Swamigalu will not be recognised in a Court of Law, such alienations will be effectual against the succeeding Swamigalu -- unless he files a suit in a Civil Court in proper time to get the alienation cancelled. So to safeguard against the Swamy restoring to such alienation, condition (c) would act as a desirable check on the actions of the Swamy in dealing with his properties. I therefore submit that both the conditions may be inserted in the document to be taken from the Swamigalu, while handing over the properties to him.

I have the honor to be,

Sir,

Your most obedient servant,

Rao Venkatachalapathy Ayyangar.

For Muzrai Commissioner.

Absent from Hd. quarters.

322

Mis 399-29-4 D

12.8.30.

To

The Muzrai Commissioner,

in Mysore, Bangalore.

Sir,

With reference to correspondence ending with your letter No. 1406/27-8 dated 24th July 1930 regarding the restoration of the management of the properties of the Sri Bhimankatte Mutt, Thirthahalli Taluk, to the Swamigalu on certain conditions, I am directed to state that the recommendations made in your letter dated 14/18th June 1930 on this subject are accepted. I am to request you to take further action as suggested in the last para of that letter.

A report of the result may be submitte for the information of Government.

I have et.,

11.8.30

11/8

Financial Secretary to Government.

Draft.

8/8

S.K.M.
8/8/30

M. C. 13]

Muz Dn 26 743

No. 14.06/27-8 / 17 file

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

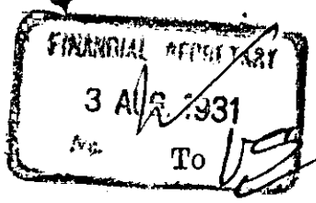
4-8-31

Bangalore, 29th July *193* 1.

1/8

FROM

S. P. RAJAGOPALACHARI, ESQ., B.A., B.L.,
Muzrai Commissioner in Mysore.



TO

Rajasevaparayana
B.Srinivasa Iyengar, Esq., B.A.,B.L.,

Secretary to Government of His Highness
the Maharaja of Mysore,
Financial *Department.*

SIR,

With reference to correspondence ending with your letter No.2206 Muz.dated 9th April 1931 re the restoration of the management of the Sri Bhimanakatte Matha properties to the Swamigalu, I have the honor to state that the Swamigalu has since signified his willingness to abide by the conditions enumerated in this office letter dated 18th June 1930 subject to which the management of the endowed properties would be restored to him and has also executed an agreement provisionally to that effect, pending the execution of a formal document on a stamp paper. The Government Advocate, who was requested to send the draft of a regular agreement has stated that he is appearing for the appellant in R.A. No. 16/30-31 on the file of the High Court of Mysore, but as only a formal draft was required, has sent the accompanying draft embodying all the conditions and reservations set forth in the letter referred to above, with the intimation that it must be written on a stamp paper of Rs.8-2-0 and registered also. The 26 the draft agreement is kindly approved and returned to me, further action will be taken to have it duly executed.

2 In this connection, I wish to submit that in respect of O.S.No.6/25-26 on the file of the District Court, Shimoga, an undertaking had been given to the High Court (then the Chief Court of Mysore) to the effect that such of the moveables as are required for daily worship will be handed over to the guardian of the Swamigalu, as he was then a minor,--- On his furnishing the requisite security, that all the vigrahas will be similarly be handed over to the guardian for worship by the Swamigalu on condition that he will not leave the jurisdiction of the Mysore State during the pendency of the case, that the Amildar of the Tirthahalli

Taluk, will be instructed to frequently inspect the Matha and the movables including Vigrahas and that the immoveable properties will continue to be managed by Government on behalf of the Swamigalu. As already reported the case was disposed of by the District Judge and the right of the present Swamigalu to the Peeta of the Bhimanakatte Mutt was also recognised. As the order of the District Judge is now in appeal before the High Court of Mysore, it is a point for consideration whether the management may be handed over to the Swamigalu, without waiting for the decision of the appeal. I suggest that the Law Department may kindly be consulted in the matter.

The favour of early orders is solicited.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

Letter No.60/31-32 dated 24/25th July 1931from the Government Advocate in Mysore, Bangalore to the Muzrai Commissioner in Mysore.

With reference to your letter No.1406/27-8 dated the 4th/7th -- July 1931 I have the honor to forward herewith, as desired, the draft of an agreement to be executed by the Swamigalu of Sri Bhimanakatte Matha in connection with the restoration to him of the management of the properties endowed to the Matha.

2. I may mention in passing that the decree of the District Judge is now under appeal in the High Court of Mysore. As I am appearing for the other party I was thinking of returning the papers to you ---- without handling them. But as this is only a draft agreement I thought I might as well send a draft for your scrutiny after drawing your --- attention to this circumstance that I am engaged for the Swami's ---- opponent in the Civil Appeal. As the document purports to be an -- agreement as well as a deed of relinquishment it must be written on a stamp paper of Rs.8-2-0, and as the Swamigalu releases all rights --- arising from the management by Government of the Mutt and its immoveable properties, the safer course is to get the deed registered

3. The file of papers recevied with your letter under reference is herewith returned.

"C o p y"

Yenkatesha Rao

For Muzrai Commissioner.

This Agreement made ..... day of ..... 1931, between His Holiness, Shri, Shri Raghu Tilaka Shri Padangalavaru Swami of Bhimanakatte, Mutt, Tirthahalli Taluk, Shimoga District, hereinafter called the Swamigalu which expression shall mean his representatives assigns and successors, of the one part and the Government of His Highness the Maharaja of Mysore represented by the Muzrai Commissioner hereinafter called Government of the other part:

WHEREAS consequent on the Swamigalu's predecessor passing away in the year 1922, the Bhimanakatte Mutt, was taken under the management of Government under Section 25 of the Muzrai Regulation, pending the final settlement of the question of succession to the --- Peeta of the said Mutt;

WHEREAS the right of the Swamigalu to succeed to the Peeta of the said Matt was recognized in Government order No.109-11/Muz.359-22-69 dated 21st July 1925 and the moveables of the Matt, which -- were put in possession of Ved: Ramacharya, the then guardian of the Swamigalu in accordance with the directions contained in the ----- Financial Secretary's letter No.1075/Muz.349-25-13 dated 10th ---- December 1926 and Government order No.2361/Muz.349-25 dated 18th June 1927, came to the possession of the Swamigalu after he attained majority and whereas the Swamigalu has been requesting Government to restore the management of the said Mutt and its properties to the Swamigalu;

AND WHEREAS the Government have agreed to do so, on condition and terms hereinafter appearing and agreed to by the Swamigalu;

THIS INDENTURE WITNESSETH AS FOLLOWS:-

1. The Swamigalu hereby takes charge from Government the management of the said Mutt and its properties with all the rights and - obligations, in respect of and pertaining to the Mutt and its properties and the management thereof, in their present condition and as they stand on the date hereof.

2. The Swamigalu shall hereafter, be solely responsible for the due fulfilment and discharge of all manner of liabilities, obligations, claims or demands be now existent or shall hereafter

hereafter arise therefrom, and Government shall not in any manner become or be held responsible therefor.

3. The Swamigalu hereby ratifies all acts done or caused to be done by Govern. ent or any of its officers, during the period the said Mutt and its properties were under the management of Government, in respect of the pertaining to the said management and the Swamigalu shall have no manner of claim or demand against the Government or any of its officers and shall have no right to hold the Government or any of its officers liable, in any manner for, and in respect of the said management and every portion thereof.

4. The Swamigalu shall be bound and abide by the scale of -- expenditure appearing in schedule A hereto annexed shall have no right to effect important deviations therefrom and alterations thereto, without the previous approval and consent in writing of the Muzrai Commissioner during the next five years from the date hereof.

5. The Swamigalu shall have no right to make alienations or other dispositions of a permanent character, or to mortgage, hypothecate or otherwise encumber any of the properties of the said Mutt or to utilize, expend, draw from, or to otherwise deal with the invested funds of the Mutt in any manner, except with the previous approval and consent in writing of the Muzrai Commissioner.

6. The Swamigalu shall hereafter, at the end of every year, and within 30 days after the close of the official year, submit to the Muzrai Commissioner a correct annual statement of income and expenditure relating to the said Mutt and its properties and should the Muzrai Commissioner require any economies to be effected in the interests of the financial position of the Mutt, the Swamigalu shall be bound to give effect to the same.

7. The Manager of the said Mutt shall be appointed with the --- previous permission in writing of the Muzrai Commissioner, and any appointment made without such consent of the Muzrai Commissioner shall be liable to be set aside by Government.

8. In the event of the failure to comply with or in the event of the breach of this agreement or any condition thereof, the Government shall have the right to determine this agreement and it shall be lawful for the Government to summarily and unconditionally enter into and resume management of the said Mutt and its properties.

9 If at the end of five years from the date hereof, the Swamigalu has, in the opinion of Government, been complying with this agreement and every condition thereof, and has been managing the Mutt and its properties in accordance with this agreement, and such management has been beneficial to the Mutt, the Government, may, at their discretion, relax or otherwise alter any of the aforesaid conditions.

10. The Swamigalu shall indemnify the Government against all claims, demands and actions of whatever description, made, advanced or instituted or that ~~any~~ may be made advanced or instituted by any person, in --- respect of or pertaining to the Mutt, its properties and the said management thereof by Government.

In WITNESS WHEREOF the parties have set their hands and seals the day and year first abovewritten.

In the presence of

1.

2.

Schedule 'A'

x

In the presence of

1.
2.

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat
( )
the *193* .

Date of issue 10/10/31.

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. 2609 and Encls

To The Huzur Asst

Sir,

With reference to the correspondence ending with your letter No: 4406/27-28 dated 1st August 1931 in regard to the restoration of the management of the Sri Bhimanakatte Matt properties to the Swamiji, I am directed to state that though there does not seem to be any legal difficulty for delivering possession of the properties in question to the

[over

WD02559—GPB—25,000—25-6-30

Y.D

Swamiji, now that the original Suit No: 6 of 25-26 on the file of the DF Judge, Shimoga, is decreed in his favour, Still, since all persons interested in the properties are before the High Court in R.A. 16 of 30-31 the safest course to follow is to apply to the High Court for a direction in regard to the proposal of the Govt to deliver over the properties to the present Swamiji in as much as he has attained majority and wants management of the said properties to be restored to him. Mr C. Lakshmanagowda, Advocate, Bangalore, has been entrusted with the further conduct of the appeal as per G.O No: PS 78-81/Law dated 27th July 1931, copy of which is herewith sent for reference. I am to request you therefore to instruct him to file an application setting forth the facts and to obtain orders of the Court Thereon

The result of the action taken in the matter may in due course be reported to Govt.

I have etc. Yours truly

Copy to Mr. C. L. Gowda for information & necessary action.

The enclosures to your letter are herewith returned.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 10th October 1931.

From

The *Secretary to the Government of His Highness the Maharaja of Mysore.*

General Department.

To

The Muzrai Commissioner in Mysore,
Bangalore.

Sir,

With reference to the correspondence ending with your letter No. 1406/27-28 dated 1st August 1931 in regard to the restoration of the management of the Sri Bhimankatte Mutt properties to the Swamigalu, I am directed to state that though there does not seem to be any legal difficulty for delivering possession of the properties in question to the Swami, now that the original suit No.6 of 25-26 on the file of the District Judge, Shimoga, is disposed of in his favour, still, since all persons interested in the properties are before the High Court in R.A. 16 of 30-31, the safest course to follow is to apply to the High Court for a direction in regard to the proposal of the Government to deliver the properties to the present Swami in as much as he has attained majority and wants management of the Mutt properties to be restored to him.

Mr. C.Lakshmana Gowda, Advocate, Bangalore, has been entrusted with the further conduct of the appeal as per Government Order No. P. 578-81/Law dated 27th July 1931, copy of which is herewith sent for reference. I am to request you therefore to instruct him to file an application setting forth the facts and to obtain orders of the Court thereon.

The result of the action taken in the matter may in due course be reported to Government. The enclosures to your letter are herewith returned.

I have the honor to be,
Sir,
Your most obedient servant,

For Secretary to

M. C. 13]

No. 1406 Revised 27-8

OFFICE OF THE MUZRAI COMMISSIONER
IN MYSORE,

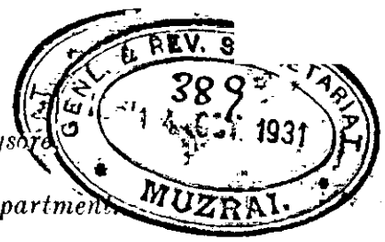
Bangalore, 10th October 1931
13.

FROM

S. HIRIANNAIYA, ESQ., M.A., B.L.,
~~S. RAJAGOPALACHARLU, ESQ., B.A., B.L.,~~
Muzrai Commissioner in Mysore.

To

Rajasevaparayana
R. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to Government of His Highness
the Maharaja of Mysore
Financial *Department.*



SIR,

In continuation of this office letter No.C.1406/27-28 dated 1st August 31, I have the honor to submit herewith for early orders of Government Srimukha dated 2-10-'31 received from the Swamigalu of the Sri Sheemanakatte Mutt requesting that the management of the Mutt properties may be restored to him without further delay.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

AM/

Appendix F G—1]

SUBJECT .....

.....

.....

Section Mez

File No. 899-29

Serial No.

Diary No. of letter replied to .....

No 558 General

To

The M.C

General and Revenue Secretariat

( )

the *193* .

Sir

Date of issue 16/10/31

With reference to your letter

No 1406/27-28 of 13.10.31

Signed by Mr V. S. Sastri

forwarding the Srimukha dated

2.10.31 from the Swamiguru

of the Sri Bhimanakalle

Mutt regarding the

restoration to him of the

Management of the Mutt

properties, I am directed

List of enclosures .....

to invite your attention to

letter No. 2107/Law

Copied by .....

dt 10/10/31 endorsed

by the General Secretary

Examined by .....

to Govt from the Law Secretary

in the matter. In

47

~~Wolfsmund Amies Bad Forbach~~

~~Thomas~~, die enclosure begun

letter under declaration is

herewith returned.

Thanks etc

VS 16.10.31

for the Group

Hoepr

48

15/10

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

Diary No. of letter repliea to .....

No 2856

To C. L. Garda Esqra B.A. B.L.
Advocate, Batticaloa

Sir,

In Continuation of this office letter no. P. 2108 dated 10th Oct 1931 suggesting the filing of an appln in the H. Ct. in the matter of the registration of the management of the Sri Bhimanakatte Mutt Properties to the Sevanigalu. I am directed to enquire as to what action has been taken in the matter so far, and to request that a copy of the application to be filed in the High Court may kindly be sent for information of this office.

I have the honour to be,
Sir,
Your obedient servant,
for Government Agent
11/11

General and Revenue Secretariat

( )

the *193*

Date of issue 18/11/31

Signed by .....

List of enclosures .....

Copied by .....

Examined by ..... TSD 16/4

WD 71—GPBM—40,000—20-7-31.

P 2857 Copy to the Mag. Comm
TSD 17/4 for information.

M. C. 13]

No. 1406 Encl one file
27-8

2/6849
583

OFFICE OF THE MUZRAI COMMISSIONER
IN MYSORE,

Bangalore, 19th November .....1931.
20

FROM

S. Hiriannaiya, Esq., M.A., B.L.,
Muzrai Commissioner in Mysore.

To

H. V. Ramaswami, Esq., M.A., B.L.,

General Secretary to Government of His Highness
the Maharaja of Mysore,

GENERAL SECRETARY 20 NOV 1931 No

SIR,

With reference to your letter No.P2107/Law dated 10th October 1931 re the restoration of the management of the Sri Bheemanakatte Matha properties to the Swamigalu, I have the honor to forward herewith copy of letter dated 23rd October 1931 received from Mr.C.L. Gowda, Advocate opining that for reasons stated by him it will not be safe for Government to hand over possession to the 4th Defendant (Vedamurthy Godhacharya, the present Swamigalu) until the appeal now pending before the High Court is disposed of unless the Government are prepared to take the risk of having to account for mesne profits in the event of the Plaintiff succeeding in the suit and that having regard to the legal position of the plaintiff no application as was suggested in your letter is competent. In the circumstances I consider it best to await the decision of the High Court, the Swamigalu also being informed accordingly.' I solicit the favour of further instructions in the matter.

2. The connected file of vernacular papers is sent for reference and return.

I have the honor to be,
Sir,
Your most obedient servant,

Hiriannaiya

Muzrai Commissioner.

Letter dated 23rd October 1931 from Mr. C.L.Gouda,B.A.,B.L. Advocate to the Muzrai Commissioner in Mysore.

Subject:- Sri Bhimanakatte Mutt.

Ref: your letter No.1406/27-28 dated 1-8-1931 to Government and their memo No.P.2608/Law dated 10-10-31 addressed to you of which a copy has been sent to me for my information.

" In reference to the above, I have the honor to state that I have carefully gone into the matter of the suggestion of Government that I may be asked to file an application in the matter of handing over the Mutt -- properties to Udipi Bodhachar (4th dft. in O.S.6 of 1925-26 of the -- District Court, Shimoga), and that I am clear that the following is the position: Inasmuch as the suit is for declaration of the ptf's -------- (Balakrishna's) right to be the Swami of the Mutt and to the possession of its properties, any handing over by the Government of the properties to the 4th Dft. while the appeal is pending would be lis pendens and as such the liability of the Government (as 1st dft.) in respect of the suit properties, ~~in the~~ in my opinion, unlikely - event of the ptf's success in the appeal, would remain intact: in other words, Government would be liable to account to the ptf., inter alia, for mesne profits between the handing over of the properties to the 4th dft. and the ptf's obtaining back delivery thereof. Further, this legal position is one that the Court has no power to alter, and no such application as is suggested by Government is therefore competent. Inasmuch as it is thus not possible to get an order from the High Court as suggested by Government, it will not be safe for Government to hand over possession to the 4th dft. -- unless and until the appeal is disposed of in his (and Govt's) favour, unless, Govt are prepared to take the risk of having (in the event of ptf's success) to account for mesne profits as above, during the time when the same have been actually gathered by a 3rd party, viz., the 4th dft.

"C o p y"

For Muzrai Commissioner.

2167 P 831 S 1

C. L. GOUDA, B.A., BL.,
ADVOCATE.

Bangalore City, 20-11-31.

To

The General Secretary
to the Govt. of H.H. the Maharaja of Mysore.

Ref: Your No. P. 2856/Law d. 18-11-31.

Sir,

Re the above, as the copy was sent to me for information merely and as instructions to file the petition were to be given by the Muz. Commissioner, I sent a letter to him giving my opinion in the matter as per copy enclosed, which fully explains the situation.

GENERAL SECRETARIAT
20 NOV. 1931
No

I am, Sir,

Yours very truly,

C L Gouda

23-10-31.

To

The Muzrai Commissioner in Mysore,

Bangalore.

Subject: Sri Bhimanakatte Mutt.

Ref: Your letter No. 1406/27-28 d. 1-8-31 to Govt. and their memo. No. P. 2608/Law d. 10-10-31 addressed to you of which a copy has been sent to me for my information.

Sir,

In reference to the above, I have the honour to state that I have carefully gone into the matter of the suggestion of Govt. that I may be asked to file an application in the matter of handing over the mutt properties to Udipi Bodhachar (4th dft. in O.S. 6 of 1925-26 of the District Court, Shimoga) and that I am clear that the following is the position:- Inasmuch as the suit is for declaration of the ptf's (Balakrishna's) right to be the Swami of the mutt and to the possession of its properties, any handing over by the Govt. of the properties to the 4th dft. while the appeal is pending, would be lis pendens, and, as such, the liability of the Govt. (as 1st dft.) in respect of the suit properties, in the - in my opinion, unlikely - event of the ptf's success in the appeal, would remain intact: in other words, Govt would be liable to account to the ptf., inter alia, for mesne profits between the handing over of the properties to the 4th dft. and the ptf's obtaining back delivery thereof. Further, this legal position is one that the Court has no power to alter, and no such application as is suggested by the Govt. is therefore competent. Inasmuch as it is thus not possible to get an order from the High Court as suggested by Govt., it will not be safe for Govt. to hand over possession to the 4th dft. unless and until the appe is disposed of in his (and Govt's) favour, unless, of

(P.T.O.)

course, Govt. are prepared to take the risk of having (in the event of ptf's success) to account for mesne profits as above during the time when the same have been actually gathered by a 3d party, viz., the 4th dft.

I am, Sir,

yours very truly,

(Sd.) O. Lakshmana Gouda

Copy.

Cdg

20/11/31

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

Date of issue 24/11/31

Signed by .....

List of enclosures .....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. 2929

To C. Lakshmanaswamy Esq BA BL advocate, Bangalore City

Dear Sir,

With reference to your letter of the 20th instant requesting the handing over of the management of the properties of the Sri Bhimanakatte Mutt to the Swami who is the 4th defendant in O.S. 6 of 25-26 in the Dt Ct Shimoga, which is now in appeal in R.A. 16 of 30-31, I am desired to request you to kindly call over here at any time convenient to you during office hours, so that the matter may be fully discussed in person.

Yours sincerely

Asst Secy

24/11

Law Dept

WD 71—GBPM—40,000—20-7-31.

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

'iary No. of letter replied to .....

No. 3075

To C. L. Gowda Esq B.A., B.L.,

Advocate, Bangalore.

General and Revenue Secretariat

( )

the *193*

Dear Sir

In continuation

I am to invite

of my D.O letter No: P2979

your attention to my letter No: 6

ate of issue 1/12/31

dated 24.11.31 re: the

handing over management of the

Signed by

Sri Bhimanakatte Mutt to the Swami

in R. A. 16/30-31, on the file of

I am to

the H. Ct of Mysore, and to

where it will be convenient

enquire

to you to go over as hereof as

I can expect you to

already requested.

discuss the matter in person.

List of enclosures .....

Yours Sincerely

Copied by .....

KSD

30/4

30/4

Examined by .....

WD 71—GBPM—40,000—20-7-31.

Appendix F G—1]

SUBJECT .....

.....

.....

Section Law

File No.

Serial No.

Diary No. of letter replied to .....

No 3242-(1)

To C. L. Gowda Esq. B.A., B.L.,

Advocate, Bangalore

Sir,

I am directed to

General and Revenue Secretariat

(

the *193*

Date of issue 10/12/31

return herewith duly signed

Copy of the application under sec

Signed by M. Rao

151 C.P.C and Sec 52 of the ~~T~~

Transfer of Property Act, to be

filed in R.A. 16/30-31 on the

file of the H. Ct. of Mysore

(Vedamurthy Balakrishna vs

Govt of Mysore), ~~Reports as to~~

*Reports as to

the progress made in this case on each date

List of enclosures .....

~~your letter dated 7.12.31.~~ ~~No further~~

of hearing to which it may be posted may

~~progress of the case may kindly be~~

kindly be intimated for information

Copied by Jr 10/12

~~intimated~~

of post. I have the

Examined by .....

Jr 10/12 Dy for Sec'y

honour to be (1) ~~Sir~~ your obt servt

Copies to the Hon'ble Court (with a copy

of the appl^n) with refce to his

letter No: 1406/27-8 dated 20th

Dec 1931. ME

2487/838

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 57

No.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

C.L.Gowda Esq.,B.A.,B.L.,
Advocate, Bangalore City.

Sir,

I am directed to return herewith dulysigned the application under Section 151 C.P.C. and Section 52 of the Transfer of Property Act, to be filed in R.A.16/30-31 on the file of the High Court of Mysore (Vedamurthy Balakrishna Vs. Goverment of Mysore) Reports as to the progress made in this case on each date of hearing to which it may be posted may kindly be intimated for information of Government.

I have the honour to be,
Sir,
Your most obedient servant,

DRP

for General Secretary to Govt.

ISD

TD

---

law (S. 25 of Regn. VII of 1927) to do so.

5. In case ptf. succeeds in the appeal, he has ample security for his costs - a comparitively small amount - in the shape of the properties of the mutt.

The 1st dft. accordingly prays that the Court may be pleased to sanction the handing over by the 1st dft. of the properties of the mutt to the 4th dft. without any liability on the part of the 1st dft. to

(P.T.O.)

the ptf. in respect of such handing over (in the event of ptf's success), or on such terms if any, as the Court may consider it just to impose.

The 1st dft. further prays that the hearing may be fixed for an early date.

Ch for Govt
CSG
7/12/31

Original may be kindly signed if approved
CSG

Note.
Until so.
Please put up the file
RMP
7.12.31

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to .....

No. 13805

To The Hon. Comr.

Sir,

I am directed to return herewith the file of revenue records received with your letter No 11606/27-8 dated 20th Nov. 1931 re: the restoration of the management of the Sri Bhimeshwara Mutt Property to the Swamyship.

I have &c

ISO 8/1 DNL 8/1 for Ch. Sec'y

General and Revenue Secretariat

( )

the *193* .

Date of issue 9/1/32

Signed by M. Ray

List of enclosures .....

Copied by M.G. 9/1/32

Examined by .....

3473 P 83/61

GOUDA, B.A., BL.,
ADVOCATE.

Bangalore City, 29-1-32.

SECRETARY
Law.
1 FEB 1932

To

The Chief Secretary

to the Govt. of H.H. the Maharaja of Mysore.

Ref: Yours No. P. 4042/Law d. 20-1-32: re R.A. 16 of 1930-31 and Bhimanakatte Mutt.

Sir,

Re petition for permission to hand over the mutt properties to 4th dft., which was duly filed on 12-12-31, applt.- ptf's advocate (Mr. A. R. N. Iyer) obtained several adjournments to file his objection statement and ultimately filed one as per annexed copy, on 22-1-32. As the trouble of deciding this interim matter could be avoided by advancing the hearing of the appeal to a near date, it was agreed on all hands that this should be done and the Court passed orders accordingly. When I went accordingly to have the date fixed up, I found that notice of the appeal which had been ordered to be published in the Gazette and certain newspapers by 18-1-32, had not yet been published by applt's advocate, of which fact I was not previously aware. I have now got the date of

(P.T.O.)

---

assurance of the first respondent that they will have careful supervision over the affairs of the Mutt and safeguard the properties of the mutt

3) In view of this assurance, the first respondent's application should not be granted.

4) Moreover if the first respondent's

application

be granted, the appellant will be put to very heavy loss and expenditure, since that will give rise to a lot of complications, and there will be very few chances of getting any relief by way of restitution of mesne profits etc.,

5) The properties are valuable and if they are delivered to the fourth defendant, they will all be wasted and the movables will all be concealed and removed out of this Hinder Jurisdiction by the fourth defendant and the first will be put to irreparable loss and damage. The appeal records are ready and if the date of appeal is published in the newspapers as ordered by this Honourable Court, the appeal may be heard without delay, and the entire case disposed of. There is therefore no necessity to grant the petition at this stage. The appeal which now stands posted to 6-6-32 may be advanced to some near date and disposed of.

6) The appellant therefore prays that the first respondent's application may be dismissed with costs.

Bangalore,
11th Jan 32.

Appendix F G—1]

SUBJECT .....

65

18th July 1932.

Jop 365

19

The

C.L.Gowda, Esq., B.A., B.L.,
Advocate, Bangalore.

Subject:- R.A.16/30-31 on the file of the High Court of Mysore (Vedamurthy Balakrishna and vs Government)

The above appeal was reported to have been posted to 22nd February 1932. No further report regarding the progress made in the case has still now been made and I am to enquire to which date and for what purpose the appeal stands posted now.

I have the honor to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

To

S.R.-2

of enclosures .....

Copied by .....

Examined by .....

WD 71—GPM—50,000—20-7-31.

S 98 1/2 P 6

GOUDA, B.A., B.L.,
ADVOCATE.

Bangalore City, 26-7-32.

To
The General Secretary
to the Govt. of H.H. the Maharaja of Mysore.

GENERAL SECRETARY
26 JULY 1932
No.

Ref: Yours No. P. 365 d. 19-7-32.re R.A. 16 of 1930-31 of the High Court.

Sir,

Re the above, the hearing of the appeal has had to be delayed in consequence of my filing a petition for taking security for costs as instructed. The appit. however objected saying that he had property ample enough for the realisation ~~for~~ costs, and this being accepted as a fact by the 4th respt. (the Swami of the Mutt) at whose instance it was that the Muzrai Commissioner moved the Govt., and the latter instructed me, to take action, the petition had to be abandoned. The appeal is now finally posted for hearing to 8-8-32 and will, as usual, receive my earnest and devoted attention.

I am, Sir,

Yours very truly,
Chalapathi Gouda

GOUDA, B.A., B.L.,
ADVOCATE.

684697 P832

Bangalore City, 28-2-33.

ETARY, EB/1933

To

The Chief Secretary
to the Govt. of H.H. the Maharaja of Mysore.

Subject: R.A. 16 of 1930-31 of the High Court: Bhimanakatte Mutt case.

Ref: Yours No. P. 4356 d. 8-2-1933.

Sir,

Re the above, the position is as below:-

The appeal had been held up for being posted before a Special Bench on the ground that both Justices Ramachandra Rao and Shankaranarayana Rao had had something to do with the case. After the receipt of your letter, I got the matter probed into and found that all that the former has done is to have put in a memo. of appearance for Govt. I thereupon wrote to Mr. Nageswara Iyer stating that, in the circumstances, there could be no valid objection to the hearing of the case by a Bench of which Mr. Justice Ramachandra Rao was a member, and asking for a reply. The ntleman however delayed the reply for 10 days and sent same on the 24th instant, after my sending him a reminder, ch reply he says that he has personally no objection would consult his client and let me know. I have

(P.T.O.)

64

also written to him, that, if his client objects, I would be obliged to renew my petition for permission to hand over the mutt properties to the 4th dft. and make a prayer that the matter might be disposed of by a single judge other than the two judges objected to, i.e., by the Chief Justice

I am, Sir,

Yours very truly,

Chelmsford

70

1414

Muz

6th April 1933.

The

The Muzrai Commissioner
in Mysore, Bangalore.

With reference to your letter No. C.1[illegible]06/27-28 dated 25th January 1933 in the matter of restoring the management of the properties of Sri Bhimanakatte Mutt to the Swamigalu, I am directed to forward herewith copy of letter dated 28th February 1933 received from Mr. C.Lakshman Gowda, Advocate, in the matter.

I have the honor to be,

Sir,

Your most obedient servant,

For Financial Secretary to Government.

ge-

onl,

in wh

Appendix F G—1]

SUBJECT .....

.....

.....

Section Mucy

File No.

Serial No.

No. of letter replied to .....

No. 1414 Encl

To

The Secy

Sir,

eneral and Revenue Secretariat

( )

the 193 .

I have the honour to forward herewith a copy of letter No. 1406/27-28 dt. 25/1/33 from Mr. C. Lakshmanan Iyer, Advocate, in the matter of restoring the management of the Sri Rhimanakkal Mutt to the Swamigal, I am directed to forward herewith a copy of letter dt. 28/2/33 from Mr. C. Lakshmana Iyer, Advocate, in the matter.

f issue 7/4/33

by B. Muddukrishna

f enclosures.....

I have etc

5/4/33

For Secy

Copied by 9/4

Examined by

WD 0253—GPB—15,000—26-8-32

Sp. S 394

17th April 3

184

1)

The

C.L. Gowda, Esq., B.A., B.L.,
Advocate, Bangalore City.

R.A.16/30-31 on the file of the High Court of Mysore
(Bhimanakatte Lutt Case.)

With reference to your letter dated 28th February 1933 the above case, I am directed to enquire whether there s any likelihood of the appeal being taken up without the constitution of a Special Bench and whether any date for its hearing has been given.

I have the honor to be,
Sir,
Your most obedient servant,

For General Secretary to Government.

ISD

TRM.2

Appendix F G—1]

SUBJECT .....

.....

.....

No.

o. of letter replied to ....

eral and Revenue Secretariat

( )

he *193* .

sue 18/4/33

by M.N.J.Rao

—Also of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. 5399

To

B. L. Gowda Esq B.A., B.L.,
Advocate B'lore.

R. A. 16/32-33 on the file of the H. Ct. of Mysore —
(Bhimanakatte Mutt Case)

Sir,

With reference to your letter ~~no dated~~ dated 20th Feb'33 re: the above Case, I am directed to enquire whether there is any likelihood of the appeal being taken up without the Constitution of a Special Bench and whether any date for its hearing has been given

I have etc.,
pp
13/4 for Sec'y

15D
13/4

469 5552 1/32
P 74

OUDA, B.A., B.L.,
DVOCATE.

Bangalore City, 20-4-33.

To

The General Secretary

to the Govt. of H.H. the Maharaja of Mysore.

Ref: Yours No. P. 5399 d. 18-4-33 re R.A. 16 of 30-31 of the High Court.

Sir,

Mr. Nageswara Iyer confirmed his attitude (of no objection to the appeal being heard before Mr. Justice Ramachandra Rao) just 3 days before the vacation, but only orally. A formal petition in the matter has thus become necessary and I shall file one accordingly as soon as the High Court re-opens.

I am, Sir,

Yours very truly,

Lakshmana Gowda

Subs for perusal
SD
25/4

Subs
25/4

e one

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

Bangalore,... ...5th July..... ..... 193 3

S. HIRIANNAIYA, ESQ., M.A., B.L.,
Muzrai Commissioner in Mysore,
Bangalore.

The *Secretary to the Government of His Highness the Maharaja of Mysore,*
F.i.n.a.n.c.i.a.l...*Department.*

With reference to correspondence ending with your letter 114/Muz. dated 7th April 1933 re: the restoration of the ement of the properties o the Sri Theemanakatte Mutt to Swamigalu, I have the honor to forward herewith copy of let No.Muz.i.C.189/27 dated 9th June 1933 from the Deputy Commis ner, Shimoga District, and to solicit the favour of early i ictions in the matter.

I have the honour to be,

Sir

Your most obedient servant,

Muzrai Commissioner.

Letter No.Muz.i.7.18[illegible]/27-2[illegible] from the Deputy Commissioner, Shimoga District, to the Muzrai Commissioner in Mysore.

With reference to correspondence ending with your letter No.1516/31-32 dated 9th January 1933 re: the handing over the management of the Pheema properties to the Swamigalu, I have the honor to request to be informed when the management will be handed over to the Swamigalu.

"COPY"

For Muzrai Commissioner.

420 of 33

GOUDA, B. A., B. L.
ADVOCATE.

Bangalore City, 21-7-33.

SECRETARIAT
JULY 1933

To

The General Secretary
to the Govt. of H.H. the Maharaja of Mysore.

Sir,

Re yours of the 16th instant re R.A. 16 of 30-31 ed 26/. the High Court (which letter, I very much regret, te Mutt got mislaid), the following is the position:-

I filed a petition d. 13-6-33 for removing the appeal from the Special Bench (to be constituted) and for its being heard before the Chief Justice and Mr. Ramachandra Rao, J., after getting applt's advocate's consent endorsed on the petition, and the appeal was thereupon posted to 13-7-33, on which date, it was adjourned to 27-7-33 for want of time, on the definite understanding that it will be heard on that day.

I am, Sir,

Yours very truly,

C. L. Gouda.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 28th July 1933.

P 475

Gen'l

m

The *Secretary to the Government of His Highness the Maharaja of Mysore*
General Department.

The Muzrai Commissioner in Mysore,
Bangalore.

R.A.16/30-31 on the file of the High Court of Mysore (Vedamoorthy Balakrishna vs Government).

With reference to your letter No.1406/27-28 dated th July 1933 regarding the above above case, I am direct- l to forward herewith for information a copy of the letter ated 21st July 1933 received from Mr.C.L.Gowda, Advocate, n the matter.

Further progress of the appeal will be intimated s soon as it is disposed of.

I have the honor to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

ISD

:.2/Fnc.1

Appendix F G—1]

SUBJECT.....

C. L. G.....

.....

No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

issue 29/7/33

by Mr N. N. J. Rao

List of enclosures.....

Copied by.....

Examined by.....

Section

File No.

Serial No.

No. P475/Enc 1

To

The Mag. Comr

R. A. 16/30-31 on the file

of the H. Ct. of Mys.

(Vedamoorthy Balakrishna vs Govt)

Sir,

With reference to your letter no. M16/1705 dated 10.7.33 re: the above case, I am directed to forward herewith for information a Copy of the letter dated 21.7.33 received from Mr. C. L. Gowda, Advocate, in the matter.

Further progress of the appeal will be intimated as soon as it is disposed of.

I have &c

26/7 for Secretary

JSN 26/7.

801813 1933

THE OFFICE OF HIS HOLINESS
SRI RAGHU TILAKA TIRTHA SRIPADANGALAVARU,
BHIMANAKATTE MUTT, TIRTHAHALLI TQ.
(MYSORE STATE)

GENL. & REV. SECRETARIAT 38-2 7 OCT 1933

Camp: "Srinivasa", 5th Road
Chamarajpet
Ref. No. [illegible] Dated at Bangalore City the 2/10/ 1933

Office of the Second Member of Council. 5 OCT. 1933 No. [illegible]

S. P. Raja Gopala Chari, Esq., B.A., B.L.,

Member of Council,

Camp: - M Y S O R E.

With Narayana Smarana and blessings for your continued health, happiness and long life, we feel extremely happy to learn that you have been confirmed as Member of Council by our gracious sovereign. It will be our earnest prayer at the feet of Lord Ramachandra that you be blessed with higher positions and greater prosperity.

We feel much concerned that the question of putting us in possession of the Mutt properties has not yet been settled. Your graciousness enough to say some time back that you would look into the matter and pass early orders. Mr. C. Lakshmana Gowda the Counsel engaged to contest the appeals before the High Court of Mysore by Lakshminarayanachar and the Javali family Bank gave us to understand that the application filed in the High Court, soliciting the orders of the court to restore the management to us had been withdrawn at the instance of the Government and that there was no legal disabilit to take action in the matter. It is not that we are over-anxious to enter upon the management of the vast concerns of the Matta as

we

are fully aware of the difficulties that confront us. We feel extremely gratified for the invaluable help that Government have rendered to this anicient and inportant Peetha ever since they undertook its management and it will be our endeavour to deserve their confidence and to obtain their approbation by good management of the lines laid down by them. It greaves us to bring to your kind notice that in spite of the best intentions of the Government for the continued well being of the Mutt and its further advancement in all directions there has been no appreciable improvement in the condition of the lands and gardens belonging to the Mutt as the local officers who are entrusted with the management cannot pay undivided attention owing to the multifarious duties and numerous calls upon their time and energy. In the result the lands have much deteriorated. Besides certain valuable properties in Satyamangalam Taluk and other places which have not come under Government control have been a fruitful source for litigation and is causing considerable loss to the Mutt. These and other several matters need looking into without further loss of time.

We desire therefore that immediate orders may kindly be caused to be issued restoring the management to us, for which act of generosity on the party of his Highness' benign Government, we fervantly pray for the welfare and prosperity of His Highness the Maharaja the Royal family and the State.

2.10.33

Serial No.	

NOTE—Contn. Sheet.

WD 73 GBPM—60,000

Secy's
16/10

2202 81
P 053

GOUDA, B. A., B. L.,
ADVOCATE.

Bangalore City, 25-10-33.

To
The General Secretary
to the Govt. of H.H. the Maharaja of Mysore.

Ref: Yours No. P.- 1609, d. 10th October 1933 re R.A. 16 of 30-31 of the High Court.

Sir,

Re the above, owing to the exigencies of the work of the High Court, the case has been adjourned a number of times but without being entered in the cause lists for the respective dates, and it is now posted for actual hearing to the 27th inst.

I enclose herewith a copy of the objections to those findings of the Lower Court which are against us, which I decided to file after careful study and consideration, which, I dare say, will interest you.

I am Sir,
Yours very truly,
C. L. Gouda

I regret the delay in replying; the same was due to the oversight of my clerk. CLG

Submitted for perusal

In the High Court of Mysore.

R.A. 16 of 30-31

Appt.-ptf.		1st respt.-1st dft.
Balakrishna	vs.	Govt. of Mysore.

(Filed on 19-10-33)

Under S. 161, C.P.C.

Counsel for 1st respt. begs to file the following objections to those findings in the judgment of the Lower Court which are against 1st respt.:-

GENL 25 No-

1. The Lower Court erred in holding (on issue No. 1) that the suit is maintainable as against 1st dft. and is not barred by Regulation VII of 1823.

In so holding, the Lower Court has failed to notice -

(i) that the word "instrument" in the Regulation means a document between parties the essence of which is execution, and not a document like a judgment or order the essence of which is pronouncement; and

(ii) that the Regulation should be read along with the substantive law on the subject, viz., as embodied in Ss. 31 and 39 of the Specific Relief Act.

2. The remark of the Lower Court (in para 9 of its judgment) that the Govt. were managing on behalf of the rightful owner, is without basis, as the plea of the Govt. on the point (in para 5 of their written statment) is that they were managing on behalf of the 4th dft., and hence the

(P.T.O.)

finding of the Lower Court that the suit for mere declaration lay, is untenable.

Copy

Adv. for 1st recpt.
19-10-35.

C. [illegible] B. A., B. L.
[illegible] CITY.
[illegible]

731

2923 384 P 854

L. GOUDA, B. A., B. L.,
ADVOCATE.

Bangalore City, 28-11-33

The General Secretary
to the Govt. of His Highness the Maharaja of
Mysore.

The 12th Dec.

Ref: Yours No. P 2432 d. 25-11-33.

Subject: R.A. 16 of 30-31 of the High Court: Balakrishna vs. Govt. of Mysore and others.

Sir,

771/33

1. The above appeal was heard on the 20th, 21st and 24th instants. Applt's arguments and mine are over: the appeal is adjourned to the 11th proximo for the remaining arguments.

2. In my opinion, it is absolutely necessary to file the annexed petition, as, otherwise, the High Court may erroneously, as the Lower Court has done, fix too low a pleader's fee, with the result that the Govt. would be out-of-pocket to the extent of the difference between the (reasonable) fee which I would be claiming from them, and the (low) fee which might be fixed by Court. In the course of my arguments, I moved the Court orally to rectify the omission, but the Court would not

(P.T.O.)

take notice of it.

I therefore request that you will kindly approve of my filing the annexed petition. If you don't mind, you may sign it as well, but this is not quite necessary.

I am, Sir,

Yours very truly,

C. L. Goude

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P2627 Gen 1

Bangalore, Dated, 5th December *1933*

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

C.L.Gowda, Esq., B.A., B.L.,

Advocate, Bangalore.

Sir,

R.A. 16/30-31 on the file of the High Court of Mysore.
(Vedamoorty Balakrishna VS: Government)

With reference to your letter dated 28th November 1933 re: above case, I am directed to state that Government approve of ur filing the application proposed by you. It is not necessary at it should be signed by the Chief Secretary.

The petition sent is therefore herewith returned for further on being taken. Progress made on the next date of hearing may ly be intimated.

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government.

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193* .

Date of issue 5/12/33

Signed by .....

List of enclosures .....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. P 2627/Sec 1

To

C. L. Gauba Esq B.Co, B.L
Advocate, Bldg

R. A. No 1/30-31 in the file
the H. Ct. of Mysore
(Vedramoorty Balakrishna vs Govt)

Sir,

With reference to your letter dated 28.11.33 re: the above Case. I am directed to state that Govt approve of ~~have no objection to~~ the application proposed by you ~~and that it~~ It may not be necessary that it should be signed by the Ch. Sec'y

The petition sent is therefore returned for further action being taken. Proper mode in the next date of hearing may kindly be intimated.

I have etc

WD 0677—GPB—15,000—8-11-33

159
4/12

4/12 for Sec'y

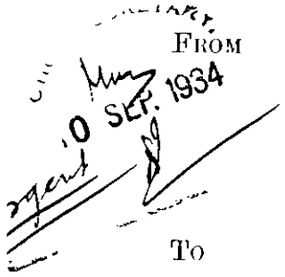
88

No C.1406/27-28.

OFFICE OF THE REVENUE & Muzrai COMMISSIONER IN MYSORE,

Camp Mandya,
Dated ~~Bangalore~~ 7th September 1934.

8



FROM

N. MADHAVA RAO, ESQ., B.A., B.L.,
Muzrai ~~Xxxxxx~~ Commissioner in Mysore.

To

R. Ranga Rao Esq., B.A., B.L.,
Chief Secretary to the Government
of His Highness the Maharaja of Mysore,
~~Xxxxxxxxxxxxxxxxxx~~ Development Department, Bangalore.

Management of the properties of the Sri Bheemanakatte Matha.

SIR,

With reference to Financial Secretary's Memo No.233/Muz. dated 22nd August 1934 forwarding the petition received from the Agent re: the above, I have the honor to invite kind reference to my letter dated 25th January 1933 giving cover to a letter received from Mr. C.L. Gowda opining that the Government may safely hand over the Matha properties to the Swamigalu without any further or other liability than for Plaintiff's cost in the unlikely event of his success in appeal. In view of this, I may be permitted to repeat my previous recommendation that the management may be restored to the Swamigalu as he has been pressing for the same. If this proposal does not commend itself to Government, I beg to suggest that the petition to the High Court for permission to hand over the properties to the Swamigalu, pending the decision of the appeal, may be renewed.

2. The other matters referred to in the Agent's petition are being dealt with separately.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

M.B.R.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 1480

Dated, Bangalore, ~~18th Sept. 1934.~~ 19

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

C.L. Gowda, Esq., B.A., B.L.,

Advocate, Bangalore City.

Sir,

R.A. 16/30-31 on the file of the High Court of Mysore

(Vedamurthy Balakrishna Vs. Government).

I am to invite reference to your letter of 11th June in which you intimated that the above appeal stood adjourned to 18th June 1934 for further arguments and to enquire whether it was heard on the said date, if so with what result. In case the appeal stands adjourned the date of hearing may be intimated. I am also to request that Government may be kept informed of the dates of hearing and the progress of the case on each such date till it is finally disposed of.

I have the honour to be,

Sir,

Your most obedient servant,

for General Secretary to Government.

Aga/2

1868 of 34
P 90

GOUDA, B. A., B. L.,
ADVOCATE.

Bangalore City, 24-9-34

The General Secretary
to the Govt. of H.H. the Maharaja of Mysore,
Bangalore.

SECRETARY
7 SEP 1934

Ref: Yours No. P 1430 d. 19-9-34 re R.A. 16 of 30-31

of the High Court.

27.9.34

Sir,

Re the above, the case stands adjourned to 1-10-34, as the High Court has directed that appeals should be posted and disposed of according to their chronological order. I would however crave leave not to write to you till the appeal is actually heard, as to do otherwise will be adding to my work without being of any use to you. I may add that, as per my practice, the case will have my undivided attention when it actually comes up for hearing.

I am, Sir,

Yours very truly,

C. L. Gouda

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE 91

General and Revenue Secretariat

No. P1905

Bangalore, Dated 19th October 1934.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To The Muzrai Commissioner in Mysore,
Bangalore.

Sir,

With reference to your letter No.C.1406/27-28 dated 8th September 1934 recommending that the management of the properties of the Sree Bhimanakatta Mutt may be restored to the Swamigalu, I am directed to state that since the regular appeal on the file of the High Court is likely to be disposed of by the end of this month, the question regarding restoring the management may be considered after the disposal of the appeal.

I have the honour to be,
Sir,
Your most obedient servant,

for General Secretary to Government.

ISD

Appendix F G—1]

SUBJECT .....

.....

.....

ENERAL

j No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

of issue 22/10/34

by JM/R

t of enclosures .....

Copied by .....

Examined by... .....

Section

File No.

Serial No.

No. D 1905/

To

The Hon. Comm

Sir,

With reference to your
letter no. C. 1606/rms dated 8th Sept'34
recommending that the management
of the properties of the Sree Bhimana
Kalle Mutt may be vested to the
Swamiyar, I am directed to
state that since the Regular
appeal
~~Civil Appeal~~ ~~dated 1660~~ is pending
~~R.A. No. 2 of 34~~ on the file of the H.Ct.
is likely to be disposed of by
~~stands posted to 1.11.34~~. and by
the end of this month, the question regarding
~~state that the result of the appeal~~
restoring the management may be considered
~~may be awaited~~ after the disposal
of the appeal

I have etc

for Secy

WD 01966—GPB—23,500—12-6-34

GOUDA, B.A., B.L.,
ADVOCATE.

Bangalore City, 31-1-35

To

The Chief Secretary

to the Govt. of His Highness the Maharaja of Mysore.

CHIEF SECRETARY'S 31 JAN. 1935

Sir,

I have mu leasure in stating that R.A. 16 of 1930-31 of the High Court (Balakrishna vs. Govt. and others: Bhimanakatte Mutt case) was, after being heard yesterday and the day before, dismissed with costs yesterday, the Court upholding my contention that the finding of the District Judge of Shimoga that the suit was maintainable as against the Govt. under Regulation VII of 1923, is wrong.

I am applying for copies of the judgment and decree today and upon receipt thereof will forward the same (along with my bill for fees and costs).

I am, Sir,

Yours very truly,

C. L. Gouda

GOUDA, B.A., B.L.,
ADVOCATE.

Law 24-34-44 (94)

Bangalore City, 15-3-35

5273
P

To
The Chief Secretary
to the Govt. of H.H. the Maharaja of Mysore.

Sir,

In submitting my bill for conducting R.A. 16 of 30-31 of the High Court (Bench Krishna vs. Govt.: Bhimanakatte Mutt case) I beg respectfully to place before Govt. the following facts connected therewith:-

1. Petition No. 2 (for costs) was not pressed because the applt. filed an affidavit showing that he had properties more than enought to meet his liability for costs and the Court expressed itself against the petition.

2. Petition No. 3 (for handing over properties) was not pressed as applt. filed objections which made the matter highly complicated and the Court expressed itself to the effect that the appeal itself might be expedited instead.

3. The annual nett income from the Mutt properties being Rs. 13000, as deposed to by the Amildar of Thirthahalli on 5-2-30 in O.S. 1 of 1926-27 of the Sub Court, Shimoga: (Javali Family Bank vs. D.C., Shimoga) and the value of the Mutt properties involved in this case being about Rs. 4 lakhs,

95

the pleader's fee properly allowable - on ad valorem bas as held in 20 M.C.C.R. 211 - is Rs 1000. but I am claiming only Rs. 50 on this account.

4. Re observation in the last parah of the judgment t I did not move earlier to get the valuation fixed, in the first place, I wanted (appropriately) to move the matter orally at the hearing as the matter was simple, and I did so the very first day on which the case was heard, viz., 20-11-33, but as the Court did not pay any attention to m request, I was obliged to file a formal petition on 6-12- which I did attaching thereto applt's advocate's acknowle of service of a copy thereof, after obtaining permission from the Chief Secy. to do so. In the usual course of things, applt's advocate should have filed his client's valuation at or before the next hearing, but he designedl abstained from doing so though there was an interval 13 months betwee the filing of the petition and the The Court did not refer to the so-called delay on my part at the arguments and so I had no opportunity to offer thi explanation to the Court.

5. Special note. I take it that my bill is payable from out of the funds of the Mutt - on whose behalf the bill was incurred - in the hands of the D.C., Shimoga

Cs

)A, B.A. B.L.,
CATE.

Bangalore City, (15-3-35)

96

.o is managing the Mutt [illegible]operties) and I therefore sub-
that suitable orders be passed and arrangement made for
rment of my bill from out of the said funds.

6. As the bill is ~~payable not by the Comptroller but~~ not for any "appearance",
~~the D.C., Shimoga,~~ I have not obtained the counter-signature
f the Judges to my bill, but the annexed copies of the Mysore petitions filed by me and of orders on ~~two~~ Mysore of them on which one formal orders have been passed, and also the judgment of ~~as well as copy of~~ the decree all of which are enclosed herewith, are sufficient vouchers for the items of my bill.

I may add that the decree is inaccurate in 2 respects n that it (1) omits the cost of one of my 4 petitions, and 2) includes the cost of vakalat which ~~is~~ was not filed.

I am, Sir,

Yours very truly,

Chakkunde Gowda

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Wednesday the 30th day of January 1935.

PRESENT

MR. H.D.C. REILLY, CHIEF JUSTICE

and

MR. JUSTICE N.K.SREENIVASA RAO.

Regular Appeal No. 16 of ~~1933-34~~ 1934-35

Vedamurty Balakrishna,
now a major. Plaintiff .. APPELLANT.

-Vs-

1. The Government of Mysore represented by its Chief Secretary, Bangalore.

2. The Swami of Bhandarakere Mutt, Sri Vidyarnava Thirtha Sree Padangalavaru, deceased by legal Representative Sree Vidyamanya Thirtha Sree Padangalavaru, minor by guardian Agraharada Lakshmi narayana Upadhya, residing at Admar, Udipi Taluk.

3. The Sishyas of Sree Bhimanakatte Mutt represented by the following who are the leading representatives thereof:-

Defendants..

(a) Hadigalla Nagappa,
(b) Mudukodu Venkatadasachar
(c) Hadigalla Naranappa, since deceased. L.Rs. unnecessary (Vide order dated 26-6-1931)
(d) Kadasoor Kadappa,
(e) Halamdoor Subbannayya,
(f) Hayagreevachar,
(g) Valageri Gururayachar, since deceased (L.Rs unnecessary vide order dated 26-6-1931)
(h) Hunasavalli Venkataramachar,
(i) Devastanada Padmanabhiah,

RESPONDENT

4 Udupi Bhodachar alias Sree Raghu Thilaka Swami, minor by guardian Udupi Ramachar,

5. Raghupraveerachar
6. Narayanachar,
7. Gurachar,
8. H. Subba Rao
9 Lakshminarayanachar,

10. Pandurangappa.
11. Nanjappa,
12. Bhima Rao, minor by guardian Madyastha.
13. S. Venkatabhatta,
14. Ajamila alias Anantharama Upadhya
15. H. Subbarayachar, since deceased L.Rs unnecessary, vide order dated 26-6-31.
16. G. Hayagreevachar, since deceased L.Rs unnecessary, vide order dated 26-6-31. — Supplemental Defendants,

RESPONDENTS

17. S. Vishnumurthy Bhatta,
18. H. Nagesha Rao
19. H. Venkata Rao
20. H. Ramakrishnappa
21. K. Gururayachar
22. H. Sreenivasachar
23. K. Anantachar,
24. M.Narasimhachar,
25. B.Hutchachar,
26. H. Ramabhatta,
27. Vyasachar,
28. Krishnabhatta,
29. Mariyappa,
30. Manjappa,
31. Venkata Rao
32. Seetharamayya,
33. Sreenivasachar,
34. Venkataramanabhatta,
35. Gururayachar,
36. Venkataramanachar,
37. B. Vedavyasachar.

Supplemental Defdts....

RESPONDENTS

Regular Appeal against the decree of the Court of the District Judge of Shimoga, in Original Suit No. 6 of 1925-26.

This appeal coming on for final hearing this day, the Court delivered the following

J U D G M E N T

R.A. 16/31-32.

JUDGMENT.

THE CHIEF JUSTICE:

In this case the plaintiff claims to be the matadhipati of the Bhimanakatte Matt in the Shimoga District. He has sued for a declaration that he is the only person entitled to succeed to the peetha and to all the property rights and privileges of the matt as the duly nominated successor of the late Swami and that therefore the nomination and the subsequent ordination of Defendant 4 by Defendant 2 are absolutely illegal and void, and also for an injunction restraining the Defendants permanently from doing any acts inconsistent with the right of the Plaintiff to succeed to the peetha. Defendant 4 it appears was nominated as the matadhipati of this matt after the death of the late matadhipati by Defendant 2, the matadhipati of a matt in Udupi, which, it has not been disputed before us, has the right to nominate a successor to the peetha of the Bhimanakatte matt if the matadhipati of that matt dies without a successor. Defendant 1 in the suit is the Government, which has been impleaded on the ground that the Government has recognized Defendant 4 as the matadhipati of the Bhimanakatte matt and is in possession of the matt property on behalf of Defendant 4 as a minor. A group of Sishyas of the matt, who support the plaintiff's case, have been impleaded as Defendant 3. Defendants 5 to 37 have come in to support Defendant

After the suit had been pending for more than three years before the District Judge of Shimoga, four preliminary issues were taken up for decision: (1) "Is the suit maintainable against the 1st Defendant (i.e., the Government)?", (2) "Has the court got jurisdiction to try this suit?", (3) "Is the recognition of the 4th Defendant an act of prerogative not liable to be questioned by civil Courts?" and (4) "Is the suit for a mere declaration not maintainable as pleaded?" The learned District Judge found against the Plaintiff on Issues 2 and 3 and therefore dismissed the suit, and against that dismissal Plaintiff has appealed.

On the first issue, whether this suit is maintainable against the Government, the learned Judge found in favour of the Plaintiff that it was maintainable. The right to bring suits against the Government in this State is given and restricted by Regulation VII of 1933, which sets out six classes of suits which may be brought in civil Courts against the Government. This suit is obviously not included in five of those classes. The learned District Judge was of opinion that it was included within the remaining class, which is "Suits for the rectification or cancellation of any instrument". That appears to me to be a very surprising view to take. Obviously this suit was not a suit for the rectification

of any instrument. Such a suit for rectification can only be brought when it is alleged that the instrument is not in accordance with the intention of the parties to it. I presume the learned Judge regarded this suit as one for the cancellation of some instrument. A suit for cancellation of an instrument can be brought, if that instrument is void or voidable, at the instance of the person who can avoid it, if he wishes to escape some danger or inconvenience from the existence of the instrument. In this case there is no instrument even mentioned by date or number in the plaint as an instrument which the plaintiff wishes to have cancelled. There is no prayer for the cancellation of any instrument. All that can be suggested for the plaintiff is that the government has recognized defendant 4 as the mataḍhipati of the patt with which the suit is concerned, and, when the plaintiff asks for a declaration that he and not defendant 4 is the proper mataḍhipati, that can somehow be construed as a prayer that the government order, in which the recognition of defendant 4 was expressed, should be cancelled. Certainly the right to bring suits for the cancellation of instruments is not included in Regulation VII of 1929, in order that parties may bring before the court any government order concerning them which they may find inconvenient. I think it is clear that the learned Judge was entirely mistaken

in supposing that this was suit for cancellation of any instrument and in his finding that this was a suit which could be brought against the government in this State. In my opinion, so far as the government is concerned, this suit ought to have been dismissed at the outset.

But there remain the plaintiff's prayers against the other defendants -- against Defendants 2 and 4. The fourth issue taken as a preliminary issue, as I have mentioned, was "Is the suit for a mere declaration not - maintainable"...? The contesting defendants took an objection to the plaintiff's suit at the earliest possible moment that it was not - maintainable unless the Plaintiff included a prayer for possession. But the plaintiff chose not to add any such prayer to his plaint. And the learned Judge found on this issue that it was not necessary that the Plaintiff should include any prayer for possession but that he could maintain the suit for declaration and injunction without claiming any further relief. The learned Judge's view is that the government has been managing the property of the matt on behalf of the rightful owner, whoever he may be, and, that being so, the Plaintiff need not ask for possession, but it was enough for him to get a declaration of his right. In support of that view the learned Judge has quoted Gudleppa v. Murigappiah, 7 Mysore Law Journal 41--

a case which I do not think supports his view of the matter at all. In that case the Plaintiff sued for a declaration that a deposit of money in the Government Savings Bank in the name of the defendant was the plaintiff's on the ground that the defendant was a mere benamidar for him. It was decided in this Court that the plaintiff's suit was not defective because he did not add a prayer for possession; and that I think was obviously so. In that case the Plaintiff alleged that any possession which the defendant had in respect of the money in the Savings Bank was the plaintiff's own possession because the defendant was merely a mask for him as his benamidar. But there are no doubt a number of other decisions, which would have supported the learned judge, if his view of the facts had been correct. There are decisions that, when a receiver or an officer of the Court or any one else holds property pending a decision, on behalf of the rightful owner of that property, whoever may eventually be found to be the rightful owner, then it is enough for a plaintiff to get a declaration that he is the rightful owner without suing also for possession of the property. But are decisions of that sort applicable to the present case? Here it is clear that the Government is holding the property, not on behalf of the rightful own

only a declaration of their right to be trustees but also sued for the office of dharmakarta, and on that aspect of the case one of the learned judges laid special stress. In that decision Kunj Bihari v. Keshavlal Hiralal, 38 Bombay 547, was quoted -- a case in which it was decided that, when a plaintiff came to court alleging that he had been installed as the gadinashin of a temple and praying for a declaration that he was the gadinashin and for an injunction against the defendants, who disputed his right, it was unnecessary for the plaintiff to add a prayer for possession of the temple. And in that decision an earlier decision of the Bombay High Court, Kurasram Ratanram v. Bhimbhai Kirparam, 6 Bombay Law Reporter 195, was quoted, in which it was laid down that, if a plaintiff wanted a declaration of his title to property, which was not in the immediate possession of the defendant and of which he did not wish himself to get immediate possession, because it was held by tenants, it was unnecessary for him to ask, when all he required was the constructive possession of a landlord, for recovery of possession in addition to the declaration for which he prayed. That is a different question. Mr. Nageswara Iyer argues that a mathadhipati is for our purpose in the same position as the dharmakarta of a temple and that on the strength of Swaminatha Iyer v. Ramier and the Bombay decision quoted in that case it is unnecessary for such a trustee, if he

sues for a declaration of his right against a competing defendant, to sue for any other relief and that therefore the proviso to Section 42 of the Specific Relief Act, that no declaration should be made for a plaintiff who can sue for further relief but does not do so, does not apply. He has quoted before us a decision of the Privy Council, Ram Parkash Das v. Anand Jee 43 Calcutta 707, in which it is said of the head of such an institution as a matt "He manages the property of the institution; he administers its affairs: and the whole asset are vested in him as the owner thereof in tr for the institution itself". But it must b noticed that in a later decision of the Pr Council, in which that decision was menti it was explained that the mutadhipati o is not strictly a trustee in respect of t property of the matt. (Vidya Varuthi v. Balusami Ayyar, 44 Madras 831). The a mutadhipati and the characteristics relation to the property of his matt discussed at length by two very learn of the Madras High Court in Vidyapra Swami v. Vidyanidhi Tirtha Swami, and their view clearly was that the of a matt was not a mere trustee in the property of the matt but had a t interest in it. The Full Bench in Pillai v. Nataraja Thambiar, 31 not dissent from that view, th

the referring judges to do so. On the contrary it was approved by the Privy Council in Chariar v. Appalappa Mudaliar, 43 Madras 869. And, whatever may be the exact relation of a mutadhipati to the general property which is the endowment of his matt, it is clear that he has a right to possession of the matt-buildings, he has a right to reside in the matt, he has a right to be supported out of the income of the matt. It is clearly inaccurate to represent the mutadhipati of a matt as nothing more than a trustee in respect of any of the property of matt. And in my opinion it is inaccurate to say that the mutadhipati of a matt is in exactly the same relation to the property of a matt as a dharmakarta is to the property of a temple in which he is the trustee. In Srinivasa v. Srinivasa Ayyar, 10 Madras 91, a suit by a plaintiff for a declaration that he was the mutadhipati of a matt was dismissed because he did not sue for possession, as he could have done. And I think in regard to the matt-buildings themselves the same is the position here. The plaintiff on his own case could have claimed possession of the matt-buildings, but he has failed to do so. That is not a right conclusion in fact. What would be the result if a decree were granted to him in accordance with his claim? There was no decree for possession against the defendant, necessarily suppose that the defendant would vacate the matt-buildings in favour of the Plaintiff. On the other hand, in such a case that appears extremely improbable. If

Plaintiff got a declaration, as he prays, he would have/follows it up by a further suit, so far as we can see, for possession of the matt: and the proviso to Section 42 of the Specific Relief Act is intended directly to prevent the multiplication of suits in that way. This is not merely a technical defect in the Plaintiff's case. It is a defect which, if overlooked, would have serious practical consequences and would directly offend against section 42 of the Specific Relief Act.

[illegible] been urged before us by Mr.Nageswara Iyer that the plaintiff should be allowed now to amend the plaint and proceed with the present suit with a prayer added for the recovery of possession. We regard it that it has been urged effectively by Mr. Satyanarayana Iyengar for defendant 1 that the objection that the plaintiff's suit was defective in that way was put forward at the earliest possible moment and the Plaintiff chose to ignore it, and now ten years later he suggests that he should be allowed to amend the plaint. Mr. Nageswara Iyer has urged that at any rate after the plaintiff had ignored the objection of the defendants for 3½ years the learned district Judge came to the conclusion that the plaintiff's suit was not defective and that we should take into account. But I think it would be an extreme thing now to allow the Plaintiff, after all these years, to amend his plaint in a respect in which he deliberately refused to do it when the defect was brought to his notice almost immediately after

the plaint was filed. There are decisions that it is improper to allow an amendment in those circumstances, and in my view, unless there can be some very exceptional reason to overlook the plaintiff's determination up to the present moment to maintain the suit in its original form, we should not be justified in allowing its amendment at this very late stage.

The learned District Judge, who was in favour of the plaintiff on both issues 1 and 4, in which I feel bound to differ from his finding against the plaintiff on Issues 2 and 3 to the effect that the Court had no jurisdiction to try this suit and that the recognition of Defendant 4 by the government as successor to the office was an act of prerogative not liable to be questioned in civil courts. I may say that at present advised I am not satisfied that the learned Judge's findings on those two issues were correct. But in the circumstances it is not now necessary to discuss the difficult questions connected with them. In my opinion this appeal should be dismissed with two sets of costs, for Defendant 1 and Defendant 4 respectively.

Mr. Lakshmana Gouda who has appeared for the government has brought to our notice that by some curious oversight the plaintiff never put any valuation upon his suit for purposes of jurisdiction and he urged that, although there was no question that this suit was to be tried in the District Court, that is not merely an academic matter because it might have some effect upon the fees to which counsel engaged in the suit would be entitled. However it was not

ot ced that neither Mr. Lakshmana Gouda nor any
ne else appearing for the [illegible] in this
litigation drew attention to this matter until
hree years after the appeal had been filed in
his Court, and I do not [illegible] in any bi...
n regard to it now. But m Mr. Lakshmana Gouda
s perhaps right in saying that the Advocate's
be fixed by the learned Judge at his original
trial in the lower Court was extremely small
considering the scope and importance of this
litigation. In my opinion the Advocate's fee in
this case may properly be fixed at Rs 250/-.

Sd/- H.D.C. Reilly,

CHIEF JUSTICE.

MR. JUSTICE M.K. SREENIVASA RAO:

I a g r e e.

Sd/- M.K. Sreenivasa Rao,

JUDGE.

"C o p y".

Deputy Registrar.

9. on 13-6-33.

In the High Court of Mysore.

R.A. 16 of 1930-31 Hg. 10-7-33

Applt.		Respts.
V. Balakrishna (ptf.)	vs.	1. Govt. of Mysore (1st dft.); 2. Udipi Bodhachar (4th dft.)

Under S. 151, C.P.C.

The 1st respt. states as follows:-

1. In connection with the above appeal the 1st respt. filed an application on 12-12-31 for permission to hand over the properties in question to the 4th respt. The petition being opposed by the applt., it was agreed on all sides that the hearing of the appeal might be expedited and the petition dropped and an order was passed accordingly on 23-1-1932.

2. Various obstacles came in the way of such expedition, and after the demise of the late lamented Chief Justice, the office seem to have put up a note to the effect that neither Mr. Shankaranarayana Rao, J., nor Mr. Ramachandra Rao, J., could hear the appeal as they had taken some part at some previous stage of the case, and the appeal is now kept by pending the constitution of a Special Bench for hearing the same and other similar appeals.

3. On probing into the matter, counsel found

(r.T.O.)

that the only part which has been taken by Mr. Ramachandra Rao, in the case, is that he has filed a memo. (when he was Govt. Advocate) stating that he was appearing for the 1st respt. Counsel thereupon wrote to applt's counsel asking him, whether, in the circumstances, he had any objection to the case being heard by a Bench of which Mr. (Justice) Ramachandra Rao would be a member, and he has orally stated that he has no objection.

The 1st respt. therefore prays that the case may be posted for (actual) hearing to an early date accordingly.

Adv. for 1st respt.

10-6-33.

C/m C/s

7-12-33.

In the High Court of Mysore.

R.A. 16 of 1930-31

O.S. 6 of 1928-28 of the Dist. Court, Shimoga.

Applt. Respt.

V. Balakrishna vs. 1. Govt. of Mysore.

Under S. 151, C.P.C.

1st respt's counsel, for 1st respt., states as follows:-

1. Counsel learns from the judgment of the Sub Judge Shimoga, in R.A. 32 and 35 of 1930-31 of this Court in which he appears and which arises out of a suit against the Bhimankatte Mutt on the bonds executed by the previous Swami, that the annual income of the Mutt properties is about Rs. 13,000. Counsel learns from other sources as well, that properties of the Mutt which are the subject matter of the above suit are worth about Rs. 4 lakhs.

2. In the plaint in the above suit, however, the value of the subject-matter of the suit for the purpose of jurisdiction is not given, though this is imperative under O. 7, r. 1, C.P.C.

3. This information is absolutely necessary in order to enable this Court to state pleader's fee, whether the same is allowed on an ad valorem basis (as is decided in 20 M.C.C.R. 211) or the Court chooses to fix the same.

Wherefore 1st respt. prays that the applt. may be called upon to state the approximate

(P.T.O.)

value of the properties of the Hutt which are the subject-matter of the above suit.

Adv. for 1st respt.
~~23-11-33.~~
6-12-33

THREE ANNAS

GOVT OF MYSORE

ಮೂರು ಆಣೆ

order on
Sch. d. 12-12-31

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday, the 22nd day of January 1932.

PRESENT

MR. JUSTICE P. MAHADEVAYYA

and

MR. JUSTICE M. RAMACHANDRA RAO.

REGULAR APPEAL NO. 16 OF 1930 - 1931.

Vedamurthy Balakrishna .. Plaintiff .. APPELLANT.

-Vs.-

1. The Government of Mysore (represented by its - Chief Secretary, Bangalore) and others. } Defendants .. RESPONDENTS.

Regular Appeal against the decree of the District Judge of Shimoga in Original Suit No. 6 of 1925-1926.

Read civil petition presented by Mr. C. Lakshmana Gouda, Advocate for the petitioner - 1st respondent - abovenamed - praying that this court may be pleased to

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
GOVT OF MYSORE
ಮೂರು ಆಣೆ

to sanction the handing over by him of the properties of the Mutt to the 4th Respondent (4th Defendant) now a major, without any liability on his (1st Respondent's) part, to the plaintiff in respect of such handing over or on such terms if any as this court may consider it just to impose.

Heard:- Mr. K. T. Bhashyam Iyengar for Mr. C. Lakshmana Gouda for the Petitioner (1st Respondent).

Mr. Mirle N. Lakshminaranappa for Mr. A.R. Nageswara Iyer for Opponent (Appellant).

ORDER.

Both sides state that the appeal may be advanced to a near date and that 1st respondent does not press the application.

The appeal may be posted to a near date.

The application is rejected.

(Signed) P. Mahadevayya
JUDGE.

(Signed) M. Ramachandra Rao.
JUDGE.

"True Copy"
For Deputy Registrar,

HIGH COURT OF MYSORE

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the
19-7-32	15-12-32	10-1-33	26-7-32	26-7-32

Copy ready on the	Copy delivered on the	Copied by	Examined by
15-12-32	10-1-33	Wajahat Hussain	N Sengalachar

THREE ANNAS

ಮೂರು ಆಣೆ

MYSORE

Certified copy
Petn. d. 9-1-32.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Monday, the 4th day of July 1932.

PRESENT

RAJADHARMAPRAVINA

C. S. DORASWAMI IYER, CHIEF JUSTICE

and

MR. JUSTICE M. RAMACHANDRA RAO.

REGULAR APPEAL NO. 16 OF 1930 - 1931.

Vedamurthy Balakrishna .. Plaintiff .. APPELLANT.

-Vs.-

The Government of Mysore by its Chief Secretary, and 36 others. } Defendants .. RESPONDENTS.

Regular Appeal against the decree of the District - Judge of Shimoga in Original Suit No. 6 of 1925-1926.

Read Civil Petitions - dated 9-1-1932 and 5-2-1932 presented by Mr. C. Lakshmana Gouda, Advocate for the 1st respondent abovenamed and Mr. T. R. Sreenivasa Iyengar,

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the

Copy ready on the	Copy delivered on the	Copied by	Examined by

THREE ANNAS
GOVT OF MYSORE
ಮೂರು ಆಣೆ

Advocate for the 4th respondent, Udipi Bhodachar alias - Sree Raghu Thilaka Swami minor by guardian Udipi Ramachar, respectively, praying that the appellant - plaintiff may be called upon to furnish security for the costs in both Courts.

These petitions coming on for orders this day, the Court pronounced the following:-

O R D E R.

Messrs. C. Lakshmana Gouda and T. R. Srinivasa Iyengar do not press the applications. They are therefore dismissed. The opponents' advocate does not press for costs. There will therefore be no order as to costs.

(Signed) C. S. Doraswami Iyer
CHIEF JUSTICE.
(Signed) M. Ramachandra Rao
J U D G E.

HIGH COURT SEAL

for Deputy Registrar.

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the
19-7-32	15-12-32	10-1-33	26-7-32	26-7-32

Copy ready on the	Copy delivered on the	Copied by	Examined by
15-12-32	10-1-33	Nagaraja murty	Nsangalachar

10

Mus. Bx. - for former of
(Misc.)
putting up the file relating
to the Blairman v Kattle
murder case (R: A. 16 post in
the file of the 14 Cl. cases);
which was put up recently in Connection
with a petn of the Sivanigaloo
requesting for restoration of
properties

15/10/15 The file has been sent
back to the
Hd/18/3

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Wednesday the 30th day of January 1935.

PRESENT.

Mr. H.D.C.Reilly, CHIEF JUSTICE

and

Mr. Justice N. K. Sreenivasa Rao.

Regular appeal No.16 of 1930-31.

Vedamurthy Balakrishna now a major. — Plaintiff .. APPELLANT.

-VS-

1. The Government of Mysore represented by its Chief Secretary, Bangalore.

2. The Swami of Bhandarakere Mutt, Sri Vidyarnava Thirtha Sree Padangalavaru, deceased by Legal Representative Sree Vidyamanya Thirtha Sree Padangalavaru, minor by guardian Agrahatada Lakshminarayana Upadhya, residing at Admar, Udipi Taluk.

3. The Sishyas of Sree Bhimanakatte Mutt represented by the following who are the leading representatives thereof:-

(a) Hadigalla Nagappa
(b) Mudukodu Venkatadasachar
(c) Hadigalla Naranappa, since deceased. L.Rs.unnecessary (Vide Order dated 26-6-1931)
(d) Kadasoor Kadappa
(e) Halamdoor Subbannayya
(f) Hayagreevachar
(g) Valageri Gururayachar, since deceased (L.Rs.unnecessary vide Order dated 26-6-1931)
(h) Hunasavalli Venkataramachar
(i) Devastanada Padmanabhiah

— Defendants .. RESPONDENTS

4. Udupi Bhodachar alias Sree Raghu Thilaka Swami, minor by guardian Udupi Ramachar

5. Raghupraveerachar
6. Narayanachar
7. Gurachar
8. H.Subba Rao
9. Lakshminarayanachar
10. Pandurangappa
11. Nanjanppa
12. Bhima Rao, minor by guardian Madyastha
13. S.Venkatabhatta

14. Ajamila alias Anantharama Upadhya	)	
15. H.Subbarayachar, since deceased L.Rs. unnecessary vide Order dated 26-6-31.	)	
16. G.Hayagreevachar, since deceased L.Rs.Unnecessary vide order dated 26-6-31.	)	
17. S.Vishnumurthy Bhatta	)	
18. H.Nagesha Rao	)	
19. H.Venkata Rao	)	
20. H.Ramakrishnappa	)	
21. K.Gururayachar	)	Supplemental Defendents
22. H.Sreenivasachar	)	
23. K.Ananthachar	)	RESPONDENTS.
24. M.Narasimhachar	)	
25. B.Hutchachar	)	
26. H.Ramabhatta	)	
27. Vyasachar	)	
28. Krishnabhatta	)	
29. Mariyappa	)	
30. Manjappa.	)	
31. Venkata Rao	)	
32. Seetharamayya	)	
33. Sreenivasachar	)	
34. Venkataramanabhatta	)	
35. K. Gururayachar	)	
36. Venkataramanachar	)	
37. B.Vedavyasachar	)	

Regular Appeal against the decree of the Court of the District Judge of Shimoga, in Original suit No.6 of 1925-1926.

This appeal coming on for final hearing this day, the Court delivered the following:-

J U D G M E N T

THE CHIEF JUSTICE:-

In this case the Plaintiff claims to be the matadhipati of the Bhimanakatte matt in the Shimoga District. He has sued for a declaration that he is the only person entitled to succeed to the peetha and to all the property, rights and privileges of the matt as the duly nominated succesor of the late Swami and that therefore the nomination and the subsequent ordination of Defendant 4 by Defendant 2 are absolutely illegal and void, and also for an injuction restraining the Defendant's permanently from doing any acts inconsistent with the right of the Plaintiff to succeed to the peetha. Defendant 4 it appears was nominated as the matadhipati of this matt

127

after the death of the late matadhipati by Defendant 2, the matadhipati of a matt in Udupi, which, it has not been disputed before us, has the right to nominate a successor to the peetha of the Bhimanakatte matt if the matadhipati of that matt dies without a successor. Defendant 1 in the suit is the Government, which has been impleaded on the ground that the Government has recognised Defendant 4 as the matadhipati of the Bhimanakatte matt and is in possession of the matt property on behalf of Defendant 4 as a minor. A group of Sishyas of the matt, who support the Plaintiff's case, have been impleaded as Defendant 3. Defendants 5 to 37 have come in to support Defendant 4.

After the suit had been pending for more than three years before the District Judge of Shimoga, four preliminary issues were taken up for decision: (1) "Is the suit maintainable against the 1st Defendant (i.e., the Government?", (2) "Has the Court got jurisdiction to try this suit?", (3) "Is the recognition of the 4th Defendant an act of prerogative not liable to be questioned by civil Courts?" and (4) "Is the suit for a mere declaration not maintainable as pleaded?". The learned District Judge found against the Plaintiff on Issues 2 and 3 and therefore dismised the suit, and against that dismissal Plaintiff has appealed.

On the first issue, whether this suit is maintainable against the Government, the learned Judge found in favour of the Plaintiff that it was maintainable. The right to bring suits against the Government in this State is given and restricted by Regulation VII of 1923, which sets out six classes of suits which may be brought in civil Courts against the Government. This suit is obviously not included in five of those classes. The learned Judge was of opinion that it was included within the remaining class, which is "Suits for the rectification or cancellation of any instrument". That appears to me to be a very surprising view to take. Obviously this suit was not a suit for the rectification of

128

any instrument. Such a suit for rectification can only be brought when it is alleged that the instrument is not in accordance with the intention of the parties to it. I presume the learned Judge regarded this suit as one for the cancellation of some instrument. A suit for cancellation of an instrument can be brought, if that instrument is void or voidable, at the instance of the person who can avoid it, if he wishes to escape some danger or inconvenience from the existence of the instrument. In this case there is no instrument even mentioned by date or number in the plaint as an instrument which the plaintiff wishes to have cancelled. There is no prayer for the cancellation of any instrument. All that can be suggested for the plaintiff is that the Government has recognised Defendant 4 as the matadhipati of the matt with which the suit is concerned, and, when the plaintiff asks for a declaration that he and not Defendant 4 is the proper matadhipati, that can somehow be construed as a prayer that the Government Order, in which the recognition of Defendant 4 was expressed, should be cancelled. Certainly the right to bring suits for the cancellation of instruments is not included in Regulation VII of 1923 in order that parties may bring before the Court any Government Order concerning them which they may find inconvenient. I think it is clear that the learned Judge was entirely mistaken in supposing that this was a suit for cancellation of any instrument and in his finding that this was a suit which could be brought against the Government in this State. In my opinion, so far as the Government is concerned, this suit ought to have been dismissed at the outset.

But there remain the plaintiff's prayers against the other Defendants -- against Defendants 2 and 4. The fourth issue taken as a preliminary issue, as I have mentioned, was "Is the suit for a mere declaration not maintainable"? The contesting Defendants took an objection to the plaintiff's suit at the earliest possible moment that it was not

maintainable unless the Plaintiff included a prayer for possession. But the Plaintiff chose not to add any such prayer to his plaint. And the learned Judge found on this issue that it was not necessary that the Plaintiff should include any prayer for possession but that he could maintain the suit for a declaration and injunction without claiming any further relief. The learned Judge's view is that the Government has been managing the property of the matt on behalf of the rightful owner, whoever he may be, and, that being so, the plaintiff need not ask for possession, but it was enough for him to get a declaration of his right. In support of that view the learned Judge has quoted Gudleppa v. Murigappiah, 7 Mysore Law Journal 41 - a case which I do not think supports his view of the matter at all. In that case the Plaintiff sued for a declaration that a deposit of money in the Government Savings Bank in the name of the defendant was the plaintiff's on the ground that the defendant was a mere benamidar for him. It was decided in this Court that the plaintiff's suit was not defective because he did not add a prayer for possession; and that I think was obviously so. In that case the Plaintiff alleged that any possession which the defendant had in respect of the money in the Savings Bank was the plaintiff's own possession because the defendant was merely a mask for him as his benamidar. But there are no doubt a number of other decisions, which would have supported the learned Judge, if his view of the facts had been correct. There are decisions that, when a Receiver of an officer of the Court or any one else holds property, pending a decision, on behalf of the rightful owner of that property, whoever may eventually be found to be the rightful owner, then it is enough for a plaintiff to get a declaration that he is the rightful owner without suing also for possession of the property. But are decisions of that sort applicable to the present case? Here it is clear

130

that the Government is holding the property, not on behalf of the rightful owner, whoever he may be, but on behalf of Defendant 4 as a minor and against the Plaintiff.

Mr.Nageswara Iyer for the Plaintiff has contended that the matadhipati of a matt is merely a trustee in respect of the property of the matt and for that reason, if it is necessary for him to come to Court to establish his title to the office of matadhipati, it is sufficient for him to sue for a declaration without asking for any further relief in the way of possession. He has quoted before us Swaminatha Iyer v. Ramier, 80 Indian Cases 1053 -- a decision of two learned Judges of the Madras High Court that, when certain plaintiffs came to Court for a declaration that they were the duly appointed dharmakartas of a certain temple and for a decree that the defendants, who claimed to be the dharmakartas, should restore the office to the plaintiffs, they need not add a prayer for possession of the property forming the endowment of the temple, because they were only claiming the office of trustees in place of the defendants, who in opposition of them claimed to be the trustees, neither party claiming the ownership of the property. It may be that in a case such as that it was not necessary for the plaintiffs to pray for the recovery of possession of the temple or of the property which formed the endowment of the temple, ownership and possession being with the idol. But it has to be noticed that in that case the plaintiffs did not claim only a declaration of their right to be trustees but also sued for the office of dharmakarta, and on that aspect of the case one of the learned Judges laid special stress. In that decision Kunj Bihari v. Keshavlal Hiralal, 28 Bombay 567, was quoted a case in which it was decided that, when a plaintiff came to Court alleging that he had been installed as the gadinashin of a temple and praying for a declaration that he was the gadinashin and for an injuction against the -

defendants, who disputed his right, it was unnecessary for the plaintiff to add a prayer for possession of the temple. And in that decision an earlier decision of the Bombay High Court, Farasram Ratanram v. Bhimbhai Kirpam 5 Bombay Law Reporter 195, was quoted, in which it was laid down that, if a plaintiff, wanted a declaration of his title to property, which was not in the immediate possession of the defendant and of which he did not wish himself to get immediate possession, because it was held by tenants, it was unnecessary for him to ask, when all he required was the constructive possession of a landlord for recovery of possession in addition to the declaration for which he prayed. That is a different question. Mr.Nageswara Iyer argues that a matadhipati is for our purpose in the same position as the Dharmakarta of a temple and that on the strength of Swaminatha Iyer v. Ramier and the Bombay decision quoted in that case it is unnecessary for such a trustee, if he sues for a declaration of his right against a competing defendant, to sue for any other relief, and that therefore the provisio to Section 42 of the specific Relief Act, that no declaration should be made for a plaintiff who can sue for further relief but does not do so, does not apply. He has quoted before us a decision of the Privy Council, Ram Parkash Das v. Anand Das, 43 Calcutta 707, in which it is said of the head of such a institution as a matt "He manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself". But it must be noticed that in a later decision of the Privy Council, in which that decision was mentioned, it was explained that the matadhipati of a matt is not strictly a trustee in respect of the property of the matt. (Vidya Varuthi Thirtha v. Balusami Ayyar, 44 Madras 831). The rights of a matadhipati and the characteristics of his relation to the property

of his matt were discussed at length by two very learned Judges of the Madras High Court in Vidyapurna Thirtha Swami v. Vidyanidhi Thirtha Swami, 27 Madras 435, and their view clearly was that the matadhipati of a matt was not a mere trustee in respect of the property of the matt but had a beneficial interest in it. The Full Bench in Kailasam Pillai v. Nataraja Thambiar, 33 Madras 265, did not dissent from that view, though invited by the referring Judges to do so. On the contrary it was approved by the Privy Council in Srinivasa Chariar v. Evalappa Mudaliar 45 Madras 565. And, whatever may be the exact relation of a matadhipati to the general property which is the endowment of his matt, it is clear that he has a right to possession of the matt-building, he has a right to reside in the matt, he has a right to be supported out of the income of the matt. It is clearly inaccurate to represent the matadhipati of a matt as nothing more than a trustee in respect of any of the property of the matt. And in my opinion it is inaccurate to say that the matadhipati of a matt is in exactly the same relation to the property of a matt as a dharmakarta is to the property of a temple of which he is the trustee. In Srinivasa Ayyangar v. Strinivasa Swami, 16 Madras 31, a suit by a plaintiff for a declaration that he was the matadhipati of a matt was dismissed because he did not sue for possession, as he could have done. And I think in regard to the matt-buildings themselves the same is the position here. The plaintiff on his own case could have sued for possession of the matt-buildings, but he has filed to do so. That is not a mere technical defect. What would be the result of a declaration granted to him in accordance with his plaint, if there was no decree for possession with it? We cannot necessarily suppose that defendant 4 would at once vacate the matt and quietly hand it over to the plaintiff. On the pleas set up in this case that appears extremely

133

improbable. If the Plaintiff got a declaration, as he prays, he would have to follow it up by a further suit, so far as we can see, for possession of the matt: and the proviso to Section 42 of the Specific Relief Act is intended directly to prevent the duplication of suits in that way. This is not merely a technical defect in the Plaintiff's case. It is a defect which, if overlooked, would have serious practical consequences and would directly offend against Section 42 of the Specific Relief Act.

But it has been urged before us by Mr.Nageswara Iyer that the plaintiff should be allowed now to amend his plaint and proceed with the present suit with a prayer added for the recovery of possession. In regard to that it has been urged effectively by Mr.Narayana Iyengar for Defendant 4 that the objection that the Plaintiff's suit was defective in that way was put forward at the earliest possible moment, and the Plaintiff chose to ignore it, and now ten years later he suggests that he should be allowed to amend his plaint. Mr.Nageswara Iyer has urged that at any rate after the plaintiff had ignored the objection of the Defendants for 3½ years the learned Lower Judge came to the conclusion that the plaintiff's suit was not defective and that we should take into account. But I think it would be an extreme thing now to allow the Plaintiff, after all these years, to amend his plaint in a respect in which he deliberately refused to do it when the defect was brought to his notice almost immediately after the plaint was filed. There are decisions that it is improper to allow an amendment in these circumstances and in my view, unless there was some very exceptional reason to overlook the Plaintiff's determination up to the present ~~ax~~ moment to maintain the suit in its original form, we should not be justified in allowing its amendment at this very late stage.

The learned District Judge, who was in favour of the plaintiff on both issues 1 and 4, in which I feel bound to differ from him found against the plaintiff on Issues

Issues 2 and 3 to the effect that the court had no jurisdiction to try this suit and that the recognition of Defendant 4 by the Government as successor to the office was an act of prerogative not liable to be questioned in civil courts. I may say that as at present advised I am not satisfied that the learned Judge's findings on these two issues were correct. But in the circumstances it is not now necessary to discuss the difficult questions connected with them. In my opinion this appeal should be dismissed with two sets of costs, for Defendant 1 and Defendant 4 respectively.

Mr.Lakshmana Gowda who has appeared for the Government has brought to our notice that by some curious oversight the Plaintiff never put any valuations upon ~~it~~ his suit for purposes of jurisdiction and he urges that, although there was no question that this suit had to be tried in the District Court, that is not merely an academic matter because it might have some effect upon the fees to which counsel engaged in the suit would be entitled. However it must be noticed that neither Mr.Lakshmana Gowda nor any one else appearing for the Government in this long litigation drew attention to this matter until three years after the appeal had been filed in this Court, and I do not think we can do anything in regard to it now. But Mr.Lakshmana Gouda is perhaps right in saying that the Advocate's fee fixed by the learned Judge at the original trial in the lower court was extremely small considering the scope and importance of this litigation. In my opinion the Advocate's fee in this case may properly be fixed at Rs.250/-.

Sd/- H.D.C.Reilly,
Chief Justice.

Mr.Justice N.K.Sreenivasa Rao.

I agree.

Sd/- N.K.Sreenivasa Rao,
Judge.

" Copy"

General Secretary to Government.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read:—

Government Order No.P.578-81/Law19-31-3 dated 27th July 1931 entrusting certain Civil and Criminal cases on the file of the High Court of Mysore, to Mr.C.L.Gowda, Advocate, Bangalore.

2. Correspondence ending with the letter dated 15th March 1935 from Mr.C.L.Gowda, Advocate, Bangalore, submitting for sanction a bill for Rs.535-0-0 being his remuneration for professional services rendered in R.A.16/30-31 on the file of the High Court of Mysore (Vedamurthy Balakrishna vs Government), suit relating to the succession to the Bhimanakatte Mutt, Chimoga District.

ORDER NO: P 5382-86 Law 24-36-16

Dated, Bangalore, the 28th March 1935.

Sanctioned. The expenses have to be paid out of the funds of Sri Bhimanakatte Mutt, Chimoga District.

The Muzrai Commissioner is requested to take necessary further action to recover the costs due under the decree and credit the realisations thereof to the Mutt.

By order,

Jt. General Secretary to Government.

To

The Mr. C. L. Gowda, Advocate, Bangalore, with the bill.

The Muzrai Commissioner in Mysore, with a copy of the Judgment and decree.

Comptroller to Government.

Deputy Commissioner, Chimoga District.

Public Prosecutor, Chimoga.

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Ty. secy
2 replies pasted
Law Dept
'A'
'S'
1/36

Diary. No of letter replied to .....

Section Law
File No. 24-34
Serial No. 16

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 30/37 193 S.

Signed by M. N. A. / R

Read— G.O. no. R. 538-51 Law 19-31-5 d 27.7.31 entrusting certain Civil and Criminal Cases on the file of the H.Ct. of Mysore; to Mr C. L. Sarda, Advocate Bl'ore.

2 Correspondence ending ~~Order thereon—No.~~ with the letter dated 15.3.35 from Mr. C.L. Sarda, Advocate, Bl'ore ~~forwarding~~ submitting for sanction a bill for R. 535-0-0 being his remuneration for professional services rendered in R.A. 16/30-31 on the file of the H.Ct. of Mysore (Vedavalli Balakrishna vs Govt.)

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

RA

Suit relating to the succession
to the Shimoga Mutt,
Shimoga Dist

order:— WP 5382-86

Sanctioned the expenses
are to be paid out of the
funds of the Shimoga Mutt, Shimoga
Dist.

The Mng. Commr is
requested to take necessary steps
claim to recover the Costs
as ~~fixed~~ under the decree and
~~Construction file in O.S. Shimoga~~
credit the realisations thereof to the Mutt.

AO (Gen Sec)
17/3

TSD
17/3

List of Enclosure

To,

1) Mr. C. L. Gowda, with the bill
2) The M. C. with a copy of the Judgt & decree
3) " Comptroller to Govt. *Copied by*
4) " DC. Shimoga *Examined by*
5) " O.S. Shimoga

11 copies and issued 21/3

Copy to Mng. Com